Volume 4

# STATUTES OF CALIFORNIA

## AND DIGESTS OF MEASURES

## 2001

Constitution of 1879 as Amended

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

**2001–02 Regular Session**
**2001–02 First Extraordinary Session**
**2001–02 Second Extraordinary Session**

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# CHAPTER 706

An act to amend Section 6369 of the Revenue and taxation Code, relating to taxation, to take effect immediately, tax levy.

[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 6369 of the Revenue and Taxation Code is amended to read:

6369. (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, medicines:

(1) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on prescription filled by a registered pharmacist in accordance with law.

(2) Furnished by a licensed physician and surgeon, dentist, or podiatrist to his or her own patient for treatment of the patient.

(3) Furnished by a health facility for treatment of any person pursuant to the order of a licensed physician and surgeon, dentist, or podiatrist.

(4) Sold to a licensed physician and surgeon, podiatrist, dentist, or health facility for the treatment of a human being.

(5) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

(6) Furnished without charge by a pharmaceutical manufacturer or distributor to a licensed physician, surgeon, dentist, podiatrist, or health facility for the treatment of a human being, or furnished by a pharmaceutical manufacturer or distributor without charge to an institution of higher education for instruction or research, provided that the exemption provided in this paragraph is limited to medicines of a type that can be dispensed only (A) for the treatment of a human being and (B) pursuant to prescriptions issued by persons authorized to prescribe medicines. The exemption provided in this paragraph shall include the materials used to package, and the constituent elements and ingredients used to produce, the medicines described in this paragraph and is intended to preclude any imposition of tax pursuant to Section 6094 or 6095 with respect to those materials, elements, and ingredients.

(b) ''Medicines'' as used in this section, means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention

of disease and commonly recognized as a substance or preparation intended for that use. However, ''medicines'' does not include any of the following:

(1) Any auditory, prosthetic, ophthalmic, or ocular device or appliance.

(2) Articles that are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical, or physical equipment or article or the component parts and accessories thereof.

(3) Any alcoholic beverage the manufacture, sale, purchase, possession, or transportation of which is licensed and regulated by the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code).

(c) Notwithstanding subdivision (b), ''medicines'' as used in this section means and includes any of the following:

(1) Sutures, whether or not permanently implanted.

(2) Bone screws, bone pins, pacemakers, and other articles, other than dentures, permanently implanted in the human body to assist the functioning of any natural organ, artery, vein, or limb and which remain or dissolve in the body.

(3) (A) Orthotic devices, other than orthodontic devices, designed to be worn on the person of the user as a brace, support, or correction for the body structure, and replacement parts for these devices. However, orthopedic shoes and supportive devices for the foot are not exempt unless they are custom-made biomechanical foot orthoses or are an integral part of a leg brace or artificial leg.

(B) For purposes of this paragraph, ''custom-made biomechanical foot orthoses'' means an individually prescribed foot orthosis which is custom fabricated over a neutral or near neutral subtalar joint with a pronated midtarsal joint position positive plaster model of the patient's foot, which model, when the cast is modified to support the osseous position of the forefoot in relationship to the rearfoot, embodies the angular osseous relationships of the anterior and posterior portions of the foot.

(4) Prosthetic devices, and replacement parts for those devices, designed to be worn on or in the person of the user to replace or assist the functioning of a natural part of the human body, other than auditory, ophthalmic, and ocular devices or appliances, and other than dentures, removable or fixed bridges, crowns, caps, inlays, artificial teeth, and other dental prosthetic materials and devices.

(5) Artificial limbs and eyes, or their replacement parts, for human beings.

(6) Programmable drug infusion devices to be worn on or implanted in the human body.

(d) ''Health facility'' as used in this section has the meaning ascribed to it in Section 1250 of the Health and Safety Code, and also includes any ''clinic'' as defined in Section 1200 of the Health and Safety Code.

(e) Insulin and insulin syringes furnished by a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of this section.

(f) Orthotic and prosthetic devices, and replacement parts for these devices, furnished pursuant to the written order of a physician or podiatrist, shall be deemed to be dispensed on prescription within the meaning of paragraph (1) of subdivision (a), whether or not the devices are furnished by a registered pharmacist.

(g) Mammary prostheses, and any appliances and related supplies necessary as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste, shall be deemed to be dispensed on prescription within the meaning of this section.

SEC. 1.5. Section 6369 of the Revenue and Taxation Code is amended to read:

6369. (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, medicines:

(1) Prescribed for the treatment of a human being by a person authorized to prescribe the medicines, and dispensed on prescription filled by a registered pharmacist in accordance with law.

(2) Furnished by a licensed physician and surgeon, dentist, or podiatrist to his or her own patient for treatment of the patient.

(3) Furnished by a health facility for treatment of any person pursuant to the order of a licensed physician and surgeon, dentist, or podiatrist.

(4) Sold to a licensed physician and surgeon, podiatrist, dentist, or health facility for the treatment of a human being.

(5) Sold to this state or any political subdivision or municipal corporation thereof, for use in the treatment of a human being; or furnished for the treatment of a human being by a medical facility or clinic maintained by this state or any political subdivision or municipal corporation thereof.

(6) Furnished without charge by a pharmaceutical manufacturer or distributor to a licensed physician, surgeon, dentist, podiatrist, or health facility for the treatment of a human being, or furnished by a pharmaceutical manufacturer or distributor without charge to an institution of higher education for instruction or research, provided that the exemption provided in this paragraph is limited to medicines of a type that can be dispensed only (A) for the treatment of a human being and (B) pursuant to prescriptions issued by persons authorized to

prescribe medicines. The exemption provided in this paragraph shall include the materials used to package, and the constituent elements and ingredients used to produce, the medicines described in this paragraph and is intended to preclude any imposition of tax pursuant to Section 6094 or 6095 with respect to those materials, elements, and ingredients.

(b) ''Medicines'' as used in this section, means any substance or preparation intended for use by external or internal application to the human body in the diagnosis, cure, mitigation, treatment, or prevention of disease and commonly recognized as a substance or preparation intended for that use. However, ''medicines'' does not include any of the following:

(1) Any auditory, prosthetic, ophthalmic, or ocular device or appliance.

(2) Articles that are in the nature of splints, bandages, pads, compresses, supports, dressings, instruments, apparatus, contrivances, appliances, devices, or other mechanical, electronic, optical, or physical equipment or article or the component parts and accessories thereof.

(3) Any alcoholic beverage the manufacture, sale, purchase, possession, or transportation of which is licensed and regulated by the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code).

(c) Notwithstanding subdivision (b), ''medicines'' as used in this section means and includes any of the following:

(1) Sutures, whether or not permanently implanted.

(2) Bone screws, bone pins, pacemakers, and other articles, other than dentures, permanently implanted in the human body to assist the functioning of any natural organ, artery, vein, or limb and which remain or dissolve in the body.

(3) (A) Orthotic devices, other than orthodontic devices, designed to be worn on the person of the user as a brace, support, or correction for the body structure, and replacement parts for these devices. However, orthopedic shoes and supportive devices for the foot are not exempt unless they are custom-made biomechanical foot orthoses or are an integral part of a leg brace or artificial leg.

(B) For purposes of this paragraph, ''custom-made biomechanical foot orthoses'' means an individually prescribed foot orthosis which is custom fabricated over a neutral or near neutral subtalar joint with a pronated midtarsal joint position positive plaster model of the patient's foot, which model, when the cast is modified to support the osseous position of the forefoot in relationship to the rearfoot, embodies the angular osseous relationships of the anterior and posterior portions of the foot.

(4) Prosthetic devices, and replacement parts for those devices, designed to be worn on or in the person of the user to replace or assist

the functioning of a natural part of the human body, other than auditory, ophthalmic, and ocular devices or appliances, and other than dentures, removable or fixed bridges, crowns, caps, inlays, artificial teeth, and other dental prosthetic materials and devices.

(5) Artificial limbs and eyes, or their replacement parts, for human beings.

(6) Programmable drug infusion devices to be worn on or implanted in the human body.

(d) ''Health facility'' as used in this section has the meaning ascribed to it in Section 1250 of the Health and Safety Code, and also includes any ''clinic'' as defined in Section 1200 of the Health and Safety Code.

(e) Insulin, lancets, blood glucose strips, and insulin syringes furnished by a registered pharmacist, or at the direction of a registered pharmacist to a person for treatment of diabetes as directed by a physician shall be deemed to be dispensed on prescription within the meaning of this section.

(f) Orthotic and prosthetic devices, and replacement parts for these devices, furnished pursuant to the written order of a physician or podiatrist, shall be deemed to be dispensed on prescription within the meaning of paragraph (1) of subdivision (a), whether or not the devices are furnished by a registered pharmacist.

(g) Mammary prostheses, and any appliances and related supplies necessary as the result of any surgical procedure by which an artificial opening is created in the human body for the elimination of natural waste, shall be deemed to be dispensed on prescription within the meaning of this section.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 6369 of the Revenue and Taxation Code proposed by both this bill and AB 249. 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 6369 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 249, in which case Section 1 of this bill shall not become operative.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. 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.

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CHAPTER 707

An act relating to victims, making an appropriation therefor 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. (a) The sum of two million dollars ($2,000,000) is hereby appropriated from the General Fund to the Office of Criminal Justice Planning (OCJP) to fund domestic violence programs. These funds shall be limited to programs that have previously received OCJP funding, but were not selected for funding in 2001.

(b) It is the intent of the Legislature that when the OCJP provides this and future competitive grant local assistance to service providers to maintain or expand comprehensive services and emergency shelter for victims of domestic violence and their children, that the OCJP take all of the following into consideration:

(1) Continuing funding to service providers that have previously received OCJP funding.

(2) Targeting geographic areas and ethnic and racial communities where no shelter-based services exist or that additional resources are necessary.

(3) Supporting services providers that are the only one within a county that accepts certain age groups, ethnic or racial populations, or non-English speakers.

(4) Whether funding would close the entire program down.

(c) It is also the intent of the Legislature that the OCJP provide technical grant assistance for a currently funded service provider applying for a grant from the OCJP before defunding that provider.

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:

Because, in order to provide timely relief to victims of domestic violence and their children, it is necessary that agencies that assist them by providing services and emergency shelter be provided with funds that will allow them to maintain and expand these services, it is necessary that this act take immediate effect.

# CHAPTER 708

An act to amend Sections 11135 and 11139 of the Government Code, and to amend Sections 22511.55 and 22511.59 of the Vehicle Code, relating to discrimination.

[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 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) As used in this section, ''disability'' means any mental or physical disability as defined in Section 12926.

SEC. 2. Section 11139 of the Government Code is amended to read:

11139. The prohibitions and sanctions imposed by this article are in addition to any other prohibitions and sanctions imposed by law.

This article shall not be interpreted in a manner that would frustrate its purpose.

This article shall not be interpreted in a manner that would adversely affect lawful programs which benefit the disabled, the aged, minorities, and women.

This article and regulations adopted pursuant to this article may be enforced by a civil action for equitable relief, which shall be independent of any other rights and remedies.

SEC. 3. Section 22511.55 of the Vehicle Code is amended to read:

22511.55. (a) (1) Any disabled person or disabled veteran may apply to the department for the issuance of a distinguishing placard. The placard may be used in lieu of the special identification license plate or

plates issued under Section 5007 for parking purposes described in Section 22511.5 when suspended from the rear view mirror or, if there is no rear view mirror, when displayed on the dashboard of a vehicle. It is the intent of the Legislature to encourage the use of these distinguishing placards because they provide law enforcement officers with a more readily recognizable symbol for distinguishing vehicles qualified for the parking privilege. The placard shall be the size, shape, and color determined by the department and shall bear the International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641, commonly known as the ''wheelchair symbol.'' The department shall incorporate instructions for the lawful use of a placard, and a summary of the penalties for the unlawful use of a placard, into the identification card issued to the placard owner.

(2) (A) The department may establish procedures for the issuance and renewal of the placards. The placards shall have a fixed expiration date of June 30 every two years. A portion of the placard shall be printed in a contrasting color that shall be changed every two years. The size and color of this contrasting portion of the placard shall be large and distinctive enough to be readily identifiable by a law enforcement officer in a passing vehicle.

(B) As used in this section, ''year'' means the period between the inclusive dates of July 1 through June 30.

(C) Prior to the end of each year, the department shall, for the most current three years available, compare its record of disability placards issued against the records of the Bureau of Vital Statistics of the State Department of Health Services, or its successor, and withhold any renewal notices that otherwise would have been sent, for any placard holders identified as deceased.

(3) Except as provided in paragraph (4), no person is eligible for more than one placard at any time.

(4) Organizations and agencies involved in the transportation of disabled persons or disabled veterans may apply for a placard for each vehicle used for the purpose of transporting disabled persons or disabled veterans.

(b) (1) Prior to issuing any disabled person or disabled veteran an original distinguishing placard, the department shall require the submission of a certificate, in accordance with paragraph (2), signed by the physician or surgeon substantiating the disability, unless the applicant's disability is readily observable and uncontested. The disability of any person who has lost, or has lost use of, one or more lower extremities or both hands, or who has significant limitation in the use of lower extremities, may also be certified by a licensed chiropractor. The blindness of any applicant shall be certified by a licensed physician or surgeon who specializes in diseases of the eye or a licensed

optometrist. The physician or person certifying the qualifying disability shall provide a full description of the illness or disability on the form submitted to the department.

(2) The physician or other person who signs a certificate submitted under this subdivision shall retain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(3) The department shall maintain in its records all information on an applicant's certification of permanent disability and shall make that information available to eligible law enforcement or parking control agencies upon a request pursuant to Section 22511.58.

(c) Any person who has been issued a distinguishing placard pursuant to subdivision (a) may apply to the department for a substitute placard without recertification of eligibility, if that placard has been lost or stolen.

(d) The distinguishing placard shall be returned to the department not later than 60 days after the death of the disabled person or disabled veteran to whom the placard was issued.

SEC. 4. Section 22511.59 of the Vehicle Code is amended to read:

22511.59. (a) Upon receipt of the applications and documents required by subdivisions (b), (c), or (d), the department shall issue a temporary distinguishing placard bearing the International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641 commonly known as the ''wheelchair symbol.'' During the period for which it is valid, the temporary distinguishing placard may be used for the parking purposes described in Section 22511.5 in the same manner as a distinguishing placard issued pursuant to Section 22511.55.

(b) (1) Any person who is temporarily disabled for a period of not more than six months may apply to the department for the issuance of the temporary distinguishing placard described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require the submission of a certificate signed by a physician or surgeon, as described in subdivision (b) of Section 22511.55, substantiating the temporary disability and stating the date upon which the disability is expected to terminate.

(3) The physician or other person who signs a certificate submitted under this subdivision shall maintain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(4) A placard issued pursuant to this subdivision shall expire not later than 180 days from the date of issuance or upon the expected termination date of the disability, as stated on the certificate required by paragraph (2), whichever is less.

(5) The fee for a temporary placard issued pursuant to this subdivision shall be six dollars ($6).

(c) (1) Any disabled person or disabled veteran who is not a resident of this state and plans to travel within the state may apply to the department for the issuance of the temporary distinguishing placard described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require certification of the disability, as described in subdivision (b) of Section 22511.55.

(3) The physician or other person who signs a certificate submitted under this subdivision shall maintain information sufficient to substantiate that certificate and, upon request of the department, shall make that information available for inspection by the Medical Board of California.

(4) A placard issued pursuant to this subdivision shall expire not later than 90 days from the date of issuance.

(d) (1) Any disabled person or disabled veteran who has been issued either a distinguishing placard pursuant to Section 22511.55 or special identification license plates pursuant to Section 5007, but not both, may apply to the department for the issuance of the temporary distinguishing placard for the purpose of travel described in subdivision (a).

(2) Prior to issuing a placard pursuant to this subdivision, the department shall require the applicant to submit either the number identifying the distinguishing placard issued pursuant to Section 22511.55 or the number on the special identification license plates.

(3) A placard issued pursuant to this subdivision shall expire not later than 30 days from the date of issuance.

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## CHAPTER 709

An act to add and repeal Chapter 8.8 (commencing with Section 52290) of Part 28 of the Education Code, relating to education technology.

[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) California is currently experiencing a growing workforce gap due largely in part to the lack of workers equipped with the necessary skills to meet the demands of the state's high-tech industries. While the

shortage has mainly affected the high-tech cluster regions of the state, the lack of skilled workers has hindered other regions of the state trying to attract high-tech industries to bolster their local economies.

(b) California's high school population is the most promising pipeline to meet the workforce needs of the technology-driven economy. Unfortunately, high school achievement is low, especially in math and science which are the most important skills needed in the high-tech industry. In fact, pupil awareness of high-tech careers is lower than most other industry sectors.

(c) Due to the lack of a skilled high-tech workforce, new educational approaches will be required to support young people to cross and eliminate the digital divide and acquire the skills that will enable them to succeed in the 21st century economy.

(d) Career oriented academies in our high schools have proven to be a highly effective approach to raising academic achievement and job preparedness for all pupils. By providing instruction that combines academic and occupational rigor through the integration of career mentoring and school-and work-based learning to the formal academic curriculum, pupils are better prepared for high-skilled careers or postsecondary education, including four-year colleges and universities.

(e) Therefore, it is the intent of the Legislature to increase the availability of information technology career academies in high schools throughout the state to improve academic achievement and supply California's high-tech industry with a skilled workforce.

SEC. 2. Chapter 8.8 (commencing with Section 52290) is added to Part 28 of the Education Code, to read:

## CHAPTER 8.8. THE CALIFORNIA INFORMATION TECHNOLOGY CAREER ACADEMY GRANT INITIATIVE

52290. (a) The state shall establish a partnership with the National Academy Foundation to create up to 100 Information Technology Career Academies in public high schools throughout the state in the 2001–02 school year.

(b) Under the partnership between the state and the National Academy Foundation, the state will allocate funds as specified in Section 52291, if the National Academy Foundation provides at least four of the following:

(1) An Information Technology Career Academy model that is based on the nationally validated model developed by the National Academy Foundation and supported by industry leaders.

(2) Teaching methods and tools that support preservice and in-service training around academy tenets.

(3) Program design and rigorous industry adopted curriculum that are reviewed and revised by the National Academy Foundation periodically to ensure relevance and current practices.

(4) Technical assistance for academy implementation and opportunities to share best practices, curriculum training for teachers, and mentoring support for intern sponsors and other industry participants.

(5) Assistance in establishing college partnerships by developing articulation agreements between secondary schools and two- and four-year colleges in California.

(6) In-kind support including, but not limited to, transportation and lodging for designated teachers to attend the Annual Institute for Staff Development and assistance to schools in accessing funding from public and private sources.

52291. Pursuant to funds appropriated for these purposes in the Budget Act or other enactment the Superintendent of Public Instruction shall select up to 100 high schools from applicants that meet the eligibility criteria set forth in Section 52292. The National Academy Foundation and the Superintendent of Public Instruction shall develop a memorandum of understanding with regard to application approval and program implementation. The Superintendent of Public Instruction shall award grants to the high schools selected by the partnership for the purpose of establishing and maintaining an Information Technology Career Academy.

(b) Grants in the amount of fifty thousand dollars ($50,000) shall be distributed to high schools selected to receive the award and that demonstrate an ability to meet or exceed the criteria set forth in Section 52292.

(c) For the 2001–02 fiscal year, grant recipients shall be selected through a competitive process with the grants awarded to those applicants that best meet the criteria specified under Section 52292.

(d) When selecting the high schools eligible to receive grants pursuant to this chapter, the Superintendent of Public Instruction shall give first priority to applicants aimed at establishing the academies in high schools ranked in the bottom half of the Academic Performance Index pursuant to Section 52056. Second priority shall be given to applicants that demonstrate the ability to create a highly integrated system involving multiple funding sources. Additionally, the Superintendent of Public Instruction shall, to be best of his or her ability, select high schools so that grants are equitably distributed among urban, rural, and suburban areas.

(e) Grants shall be awarded only to school districts, county offices of education, and charter schools that maintain grades 9 to 12, inclusive. However, a school district, county office of education, or charter school

that maintains grades 9 to 12, inclusive may contract with a nonprofit organization for the purposes of administering the academy.

52292. In order to be eligible for grants, applicants shall meet or exceed all of the following criteria:

(a) The ability to build on and integrate at least one or more other relevant and beneficial workforce development and educational programs currently operating in the local area that will support and maximize the effectiveness of the academy including, but not limited to, technical preparation and vocational education programs provided through the Carl D. Perkins Vocational and Applied Technology Education Act of 1998 (20 U.S.C. Sec. 2301), programs provided through the Workforce Investment Act of 1998 (29 U.S.C. Sec. 2801), local school-to-career partnerships as provided through School-to-Career Initiatives (commencing with Section 53080) of Chapter 17 of Part 28, and Regional Occupational Centers and Programs established pursuant to Article 1 (commencing with Section 52300) of Chapter 9. Building upon and integrating these programs and entities shall, in addition to the assistance from the National Academy Foundation, help strengthen the academy by providing additional resources and infrastructure needed for long-term sustainability.

(b) The ability to demonstrate an amount equal, at a minimum, to fifty thousand dollars ($50,000) leveraged from existing programs or entities as set forth in subdivision (a).

(c) An amount equal to fifty thousand dollars ($50,000) in the form of direct or in-kind support, or both, provided by participating companies or other private sector organizations or nonprofit entities.

(d) An assurance that the state funds are used for the development, operation, and support of the Information Technology Career Academy. This includes, but is not limited to, upgrading or providing new equipment, providing support services for special population pupils, purchasing new instructional materials, developing or increasing postsecondary articulation, increasing the use of new technology, integrating academic curriculum into the vocational courses, developing industry certifications, innovating new courses or any other uses necessary to operate the academy.

(e) An assurance that each academy will be established as a ''school within a school.''

(f) Assurance that each academy will, at a minimum, provide all of the following:

(1) Instruction containing coursework that prepares the pupil for a regular high school diploma.

(2) A ''laboratory'' class related to the academy's occupational field.

(3) A mentor from the business community during the pupil's 10th, 11th, or 12th grade year.

(4) An internship or paid job related to information technology. This may be offered during the grade 11, grade 11 summer, or grade 12 year. If summer school is required during summer after the 11th grade, a pupil may be exempted from this requirement.

(5) Additional motivational activities with private sector involvement to encourage academic and occupational preparation.

(6) An assurance that at least 50 percent of the pupils selected to the academy are ''at-risk.'' However, the grantee may request, and the Superintendent of Public Instruction may waive, this requirement.

(g) The establishment of a local business advisory board for the purpose of securing quality internships for academy pupils, supporting mentoring and job observation experiences for both pupils and teachers, sponsoring fundraising events for pupils activities and scholarships, assisting in curriculum development and revision, raising awareness of the academy, and building community support.

52292.5. For the purposes of this chapter ''at-risk pupil'' means a pupil who meets at least two of the five following criteria:

(a) Has a record of irregular attendance.

(b) Has a record of underachievement.

(c) Has a record of low motivation or a disinterest in the regular school program.

(d) Disadvantaged economically.

(e) Comes from an economically disadvantaged family.

52293. In any fiscal year, this chapter shall be implemented only to the extent that funds are specifically appropriated for that fiscal year for the purposes of this chapter in the annual Budget Act or other measure.

52294. This chapter shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 3. The Superintendent of Public Instruction shall contract for an independent review of the effectiveness of the California Information Technology Career Academy Grant Initiative set forth in Chapter 8.8 (commencing with Section 52290) of Part 28 of the Education Code and shall submit a report to the appropriate policy and fiscal committees of the Legislature by May 1, 2003. The independent review shall include, but not be limited to, all of the following:

(a) The level of participation by the National Academy Foundation as specified in subdivision (b) of Section 52290 of the Education Code.

(b) The ability of each high school participating in the program to meet or exceed the criteria as specified under Section 52292 of the Education Code.

(c) The level of academic performance of academy pupils compared to the rest of the pupil population at the high school. The measurements shall include, but not be limited to, grade point average, attendance rates,

dropout rates, graduation rates, and measurements of pupil, parent, and employer satisfaction.

(d) The level of business and industry engagement including, but not limited to, in-kind contributions, mentor services, work-based learning opportunities, and summer jobs.

(e) The academic level of the pupil prior to, and after, placement in the academy. The measurements shall include, but not be limited to, grade point average, attendance rates, decreased dropout rates, and graduation rates.

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## CHAPTER 710

An act to add and repeal Section 2407.5 of the Vehicle Code, relating to vehicles.

[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) Cellular telephones and other driver distractions are rapidly becoming a significant concern with regard to highway and traffic safety.

(b) The usage of cellular telephones and other driver distractions will continue to proliferate in motor vehicles.

(c) Future motor vehicles will likely provide drivers with concierge services, web-based information, online e-mail capabilities, CD-ROM access, onscreen and audio navigation technology, and a variety of other information and entertainment services.

(d) In considering these emerging technologies, it is the intent of the Legislature to focus on the potential safety implications associated with driver distractions while using advanced in-vehicle technologies that receive, transmit, or display various types of information, including those that allow drivers to phone, fax, obtain route guidance, view infrared images on a heads-up display, and use the Internet and other electronic devices.

SEC. 2. Section 2407.5 is added to the Vehicle Code, to read:

2407.5. (a) Any traffic collision report prepared by a member of the Department of the California Highway Patrol or any other peace officer shall include information as to whether a cellular telephone or other driver distraction or inattention is a known or suspected associated factor to the cause of the traffic collision.

(b) Information described in subdivision (a) shall be collected and transmitted to the department on or before July 1, 2002.

(c) The department shall compile the information from its own members and that supplied by other peace officers.

(d) The department shall study the compiled data and make recommendations concerning the issue of driver distractions and inattention as they relate to associated factors to the cause of traffic collisions. The department shall develop recommendations for legislative or regulatory action to address these issues, and, as part of the study, the department shall review and analyze a sample of existing studies and statistics relating to the issue of driver distractions and inattention as associated factors to the cause of traffic collisions.

(e) As used in this section, ''driver distractions and inattention'' include, but are not limited to, the use of cellular telephones, electronic devices, and radios, smoking, eating, children, animals, personal hygiene, reading, or other similar distractions.

(f) The department shall submit a report regarding the study described in this section to the Governor and Legislature, including findings and recommendations, on or before December 31, 2002.

(g) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 3. 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.

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## CHAPTER 711

An act to add Section 1748.13 to the Civil Code, relating to consumer credit.

[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 1748.13 is added to the Civil Code, to read:

1748.13. (a) A credit card issuer shall, with each billing statement provided to a cardholder in this state, provide the following on the front of the first page of the billing statement in in type no smaller than that required for any other required disclosure, but in no case in less than 8-point capitalized type:

(1) A written statement in the following form: ''Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance.''

(2) Either of the following:

(A) A written statement in the form of and containing the information described in clause (i) or (ii), as applicable, as follows:

(i) A written three-line statement, as follows:

''A one thousand dollar ($1,000) balance will take 17 years and three months to pay off at a total cost of two thousand five hundred ninety dollars and thirty-five cents ($2,590.35).
A two thousand five hundred dollar ($2,500) balance will take 30 years and three months to pay off at a total cost of seven thousand seven hundred thirty-three dollars and forty-nine cents ($7,733.49).
A five thousand dollar ($5,000) balance will take 40 years and two months to pay off at a total cost of sixteen thousand three hundred five dollars and thirty-four cents ($16,305.34).
This information is based on an annual percentage rate of 17 percent and a minimum payment of 2 percent or ten dollars ($10), whichever is greater.''

In the alternative, a credit card issuer may provide this information for the three specified amounts at the annual percentage rate and required minimum payment which are applicable to the cardholder's account. The statement provided shall be immediately preceded by the statement required by paragraph (1).

(ii) Instead of the information required by clause (i), retail credit card issuers shall provide a written three-line statement to read, as follows:

''A two hundred fifty dollar ($250) balance will take two years and eight months to pay off a total cost of three hundred twenty-five dollars and twenty-four cents ($325.24).
A five hundred dollar ($500) balance will take four years and five months to pay off at a total cost of seven hundred nine dollars and ninety cents ($709.90).
A seven hundred fifty dollar ($750) balance will take five years and five months to pay off at a total cost of one thousand ninety-four dollars and forty-nine cents ($1,094.49).
This information is based on an annual percentage rate of 21 percent and

a minimum payment of 5 percent or ten dollars ($10), whichever is greater.''

In the alternative, a retail credit card issuer may provide this information for the three specified amounts at the annual percentage rate and required minimum payment which are applicable to the cardholder's account. The statement provided shall be immediately preceded by the statement required by paragraph (1). A retail credit card issuer is not required to provide this statement if the cardholder has a balance of less than five hundred dollars ($500).

(B) A written statement providing individualized information indicating an estimate of the number of years and months and the approximate total cost to pay off the entire balance due on an open-end credit card account if the cardholder were to pay only the minimum amount due on the open-ended account based upon the terms of the credit agreement. For purposes of this subparagraph only, if the account is subject to a variable rate, the creditor may make disclosures based on the rate for the entire balance as of the date of the disclosure and indicate that the rate may vary. In addition, the cardholder shall be provided with referrals or, in the alternative, with the ''800'' telephone number of the National Foundation for Credit Counseling through which the cardholder can be referred, to credit counseling services in, or closest to, the cardholder's county of residence. The credit counseling service shall be in good standing with the National Foundation for Credit Counseling or accredited by the Council on Accreditation for Children and Family Services. The creditor is required to provide, or continue to provide, the information required by this paragraph only if the cardholder has not paid more than the minimum payment for six consecutive months, after July 1, 2002.

(3) (A) A written statement in the following form: ''For an estimate of the time it would take to repay your balance, making only minimum payments, and the total amount of those payments, call this toll-free telephone number: (Insert toll-free telephone number).'' This statement shall be provided immediately following the statement required by subparagraph (A) of paragraph (2). A credit card issuer is not required to provide this statement if the disclosure required by subparagraph (B) of paragraph (2) has been provided.

(B) The toll-free telephone number shall be available between the hours of 8 a.m. and 9 p.m., Pacific standard time, seven days a week, and shall provide consumers with the opportunity to speak with a person, rather than a recording, from whom the information described in subparagraph (A) may be obtained.

(C) The Department of Financial Institutions shall establish a detailed table illustrating the approximate number of months that it

would take and the approximate total cost to repay an outstanding balance if the consumer pays only the required minimum monthly payments and if no other additional charges or fees are incurred on the account, such as additional extension of credit, voluntary credit insurance, late fees, or dishonored check fees by assuming all of the following:

(i) A significant number of different annual percentage rates.

(ii) A significant number of different account balances, with the difference between sequential examples of balances being no greater than one hundred dollars ($100).

(iii) A significant number of different minimum payment amounts.

(iv) That only minimum monthly payments are made and no additional charges or fees are incurred on the account, such as additional extensions or credit, voluntary credit insurance, late fees, or dishonored check fees.

(D) A creditor that receives a request for information described in subparagraph (A) from a cardholder through the toll-free telephone number disclosed under subparagraph (A), or who is required to provide the information required by subparagraph (B) of paragraph (2), may satisfy its obligation to disclose an estimate of the time it would take and the approximate total cost to repay the cardholder's balance by disclosing only the information set forth in the table described in subparagraph (C). Including the full chart along with a billing statement does not satisfy the obligation under this section.

(b) For purposes of this section:

(1) ''Credit card'' has the same meaning as in paragraph (2) of subdivision (a) of Section 1748.12.

(2) ''Open-end credit card account'' means an account in which consumer credit is granted by a creditor under a plan in which the creditor reasonably contemplates repeated transactions, the creditor may impose a finance charge from time to time on an unpaid balance, and the amount of credit that may be extended to the consumer during the term of the plan is generally made available to the extent that any outstanding balance is repaid and up to any limit set by the creditor.

(3) ''Retail credit card'' means a credit card is issued by or on behalf of a retailer, or a private label credit card that is limited to customers of a specific retailer.

(c) (1) This section shall not apply in any billing cycle in which the account agreement requires a minimum payment of at least 10 percent of the outstanding balance.

(2) This section shall not apply in any billing cycle in which finance charges are not imposed.

SEC. 2. If the federal Bankruptcy Reform Act of 2001, as proposed by H.R. No. 333 of the 107th Congress, is enacted and includes the

provisions of Section 1301 (Enhanced Disclosures Under an Open End Credit Plan) as it read on July 17, 2001, credit card issuers and retail credit card issuers shall be exempt from the following provisions of Section 1748.13 of the Civil Code:

(a) The provisions of paragraph (1) of subdivision (a).

(b) (1) The provisions of clause (i) of subparagraph (A) of paragraph (2) of subdivision (a) as it relates to that portion of the statement describing the payments made on a balance of one thousand dollars ($1,000). However, the portion of the statement describing the payments made on balances of two thousand five hundred dollars ($2,500) and five thousand dollars ($5,000) shall be inserted immediately after the statement required by Section 1301 (Enhanced Disclosures Under an Open End Credit Plan) of the federal act.

(2) For retail credit card issuers, the provisions of clause (ii) of subparagraph (A) of paragraph (2) of subdivision (a) as it relates to that portion of the statement describing the payments made on a balance of two hundred fifty dollars ($250). However, the portion of the statement describing the payments made on balances of five hundred dollars ($500) and seven hundred fifty dollars ($750) shall be inserted immediately after the statement required by Section 1301 (Enhanced Disclosures Under an Open End Credit Plan) of the federal act.

(c) The provisions of subparagraph (A) of paragraph (3) of subdivision (a).

SEC. 3. Except for the provisions of subparagraph (C) of paragraph (3) of subdivision (a) of Section 1748.13 which shall become operative on January 1, 2002, this act shall become operative on July 1, 2002.

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## CHAPTER 712

An act to amend Sections 13961, 13961.01, 13965, and 13965.5 of, to amend and repeal Sections 13960 and 13964 of, and to add and repeal Section 13960.6 of, the Government Code, relating to victims of crime, and making an appropriation therefor.

[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 13960 of the Government Code, as amended by Section 1.3 of Chapter 895 of the Statutes of 1998, is amended to read:

13960. As used in this article:

(a) (1) ''Victim'' means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) ''Derivative victim'' means a resident of California, or resident of another state, who is one of the following:

(A) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiancé or fiancée, and witnessed the crime.

(E) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

(b) (1) ''Injury'' includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 278, 278.5, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed. For purposes of this article, a victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code, who sustains emotional injury, is presumed to have sustained physical injury if felony charges were filed.

(2) It is the intent of the Legislature that in order for the presumption set forth in paragraph (1) relating to a violation of Section 278 or 278.5 of the Penal Code to apply, the deprivation of custody as described in those sections shall have endured for not less than 30 days. For the purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(3) A child who has been the witness of a crime or crimes of domestic violence may be presumed by the board to have sustained physical injury.

(c) ''Crime'' means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult that results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily

absent from the state. ''Crime'' includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

(5) Injury or death caused by a person in violation of subdivision (c) of Section 192 or Section 192.5 of the Penal Code.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators against a victim.

(d) ''Pecuniary loss'' means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses that became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in 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.

(D) 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.

(E) 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.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) 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.

(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

(I) A person who qualifies as a psychology intern as described in Section 2911 of the Business and Professions Code who is under the supervision of a licensed mental health professional (psychiatrist, psychologist, social worker, or marriage and family therapist) in a university hospital or university medical school clinic or a person who has completed the qualifications described in Section 2911 of the Business and Professions Code who is pursuing a postdoctoral and training in a university or university medical school clinic under the supervision of a licensed mental health professional (psychiatrist, psychologist, social worker, or marriage and family therapist) for the purpose of achieving higher clinical competency.

(J) 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, or 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.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) ''Board'' means the California Victim Compensation and Government Claims Board.

(f) ''Victim centers'' means those centers as specified in Section 13835.2 of the Penal Code.

(g) ''Peer counselor'' means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

(h) 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 13960 of the Government Code, as added by Section 1.4 of Chapter 895 of the Statutes of 1998, is amended to read:

13960. As used in this article:

(a) (1) ''Victim'' means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) ''Derivative victim'' means a resident of California who is one of the following:

(A) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiancé, and witnessed the crime.

(b) ''Injury'' includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a crime committed in violation of Section 270 of the Penal Code, as a result of

conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed or a prosecuting attorney expresses the opinion that the child is a victim of that section.

(c) ''Crime'' means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult that results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. ''Crime'' includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators.

(d) ''Pecuniary loss'' means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including inpatient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of outpatient psychiatric, psychological, or other mental health counseling related expenses that became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in 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.

(D) 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.

(E) 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.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) 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.

(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

(I) A person who qualifies as a psychology intern as described in Section 2911 of the Business and Professions Code who is under the supervision of a licensed mental health professional (psychiatrist, psychologist, social worker, or marriage and family therapist) in a university hospital or university medical school clinic or a person who has completed the qualifications described in Section 2911 of the Business and Professions Code who is pursuing a postdoctoral and training in a university or university medical school clinic under the supervision of a licensed mental health professional (psychiatrist, psychologist, social worker, or marriage and family therapist) for the purpose of achieving higher clinical competency.

(J) 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, or 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.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) ''Board'' means the California Victim Compensation and Government Claims Board.

(f) ''Victim centers'' means those centers as specified in Section 13835.2 of the Penal Code.

(g) ''Peer counselor'' means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

(h) This section shall become operative on January 1, 2004.

SEC. 3. Section 13960 of the Government Code, as added by Section 2.7 of Chapter 697 of the Statutes of 1998, is repealed.

SEC. 4. Section 13960.6 is added to the Government Code, to read:

13960.6. (a) Notwithstanding the residency requirement of paragraph (2) of subdivision (a) of Section 13960, a nonresident of the United States who meets the other requirements of that paragraph shall be deemed to be a ''derivative victim'' for purposes of this chapter and may be reimbursed for outpatient mental health counseling when that mental health counseling is necessary as a direct result of a crime that occurred in this state, in the amounts set forth in this chapter.

(b) 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. 5. Section 13961 of the Government Code is amended to read:

13961. (a) A victim or derivative victim may file an application for assistance with the board.

(b) The board shall supply and make available an application form for this purpose. The form shall be in one part, in laymen's terms, and shall be accompanied by information including, but not limited to, all of the following:

(1) The eligibility of applicants, the types of claims covered, and the maximum amount payable for these claims.

(2) Information explaining the procedure to be used to evaluate an applicant's claims.

(3) Other information pertinent to the applicant as deemed necessary by the board.

(4) Information about the existence and location of local victim centers.

(c) (1) The period prescribed for the filing of an application for assistance shall be one year after the date of the crime or one year after the victim attains 18 years of age, whichever is later.

(2) The board may for good cause grant an extension of the time period in paragraph (1) not to exceed three years after the date of the crime or after the victim attains 18 years of age, whichever is later.

(3) The board may grant an extension of the time period in paragraph (1) or (2) if either subparagraph (A), (B), or (C) is true:

(A) The application is filed within one year from the date of the filing of an indictment, information, or complaint alleging the facts that gave rise to the application; and the prosecuting attorney recommends that the board find that the applicant cooperated with law enforcement and the prosecuting attorney in the apprehension and prosecution of the person charged with the crime, and the board so finds.

(B) A victim is called to testify in a criminal proceeding adjudicating the facts that gave rise to the application; the application is filed within one year of the completion of the victim's testimony; and the prosecuting attorney recommends that the board find that the applicant cooperated with law enforcement and the prosecuting attorney in the apprehension and prosecution of the person charged with the crime, and the board so finds.

(C) The application is filed within one year of the time that a formal written decision is made by the prosecuting attorney not to prosecute, and the prosecuting attorney recommends that the board find that the applicant cooperated with law enforcement and the prosecuting attorney in the investigation and consideration of the crime for prosecution, and the board so finds.

(d) The period prescribed for filing an application by or on behalf of a derivative victim shall be tolled when the board accepts the application filed by a victim of the same qualifying crime.

(e) The application for assistance shall be verified under penalty of perjury by the victim or derivative victim. If the victim or derivative victim is a minor or is incompetent, the application shall be verified under penalty of perjury or on information and belief by the parent with legal custody or the legal guardian of the victim or derivative victim for whom the application is made.

(f) The application shall contain all of the following:

(1) A description of the date, nature, and circumstances of the crime or public offense.

(2) A complete financial statement, including, but not limited to, the cost of medical care or burial expense and the loss of wages that the victim or the loss of support that the derivative victim has incurred or will incur and the extent to which the applicant has been or will be indemnified for these expenses from any source.

(3) When appropriate, a statement indicating the extent of any disability resulting from the injury incurred.

(4) An authorization permitting the board or a local victim center, or both, to verify the contents of the application.

(5) Any other information as the board may require.

SEC. 6. 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 dies 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 dies as a result of the crime, but the fact is not discovered until after the expiration of the time limits imposed by this section.

(b) No application shall be denied under paragraphs (1) to (3), 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.

SEC. 6.5. 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.

SEC. 7. Section 13964 of the Government Code, as amended by Section 2.5 of Chapter 895 of the Statutes of 1998, is amended to read:

13964. (a) After having heard the evidence relevant to the application for assistance, the board shall approve the application if a preponderance of the evidence shows that as a direct result of the crime the victim or derivative victim incurred an injury that resulted in a pecuniary loss.

(b) An application for assistance may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime or the involvement of the persons whose injury or death give rise to the application. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether the minor's application should be denied pursuant to this section.

(c) No victim shall be eligible for assistance under this article under either of the following circumstances:

(1) The board finds that the victim knowingly and willingly participated in the commission of the crime. This paragraph shall not apply if the injury occurred as a direct result of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code.

(2) The board finds that the victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state as well as any compelling health and safety concerns in determining whether the minor is eligible for assistance pursuant to this section.

(d) No derivative victim shall be eligible for assistance under this article under either of the following circumstances:

(1) The board finds that the victim or derivative victim knowingly and willingly participated in the commission of the crime.

(2) The board finds that the victim or derivative victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(e) Notwithstanding paragraph (2) of subdivision (c) and paragraph (2) of subdivision (d), for claims based on domestic violence the Board of Control shall adopt guidelines that allow the board to consider and approve applications for assistance based on domestic violence, taking into account the victim's age, physical condition, psychological state, and any compelling health or safety reasons, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family, in evaluating a victim's cooperation with law enforcement, and giving due consideration to the degree of cooperation of which the victim is capable in light of the presence of any of these factors.

For the purposes of this section, the application of a derivative victim of domestic violence under the age of 18 years shall not be deemed ineligible on the basis of ineligibility of the victim under subdivision (b).

(f) No application shall be denied solely because no criminal complaint has been filed, unless the complaint has not been filed for one of the reasons stated in subdivision (c) or (d). Moreover, no application shall be denied because a criminal complaint is filed, but later dismissed, if the dismissal is not for the reasons stated in subdivision (c) or (d).

(g) Once an application has been accepted by the board pursuant to subdivision (b) of Section 13962, as the application pertains to medical or medical-related expenses, the claim shall continue to be processed and either awarded or denied pursuant to this article in the event of the death of the applicant.

(h) If a nonoffending parent in a child sexual abuse case cooperates with the prosecution or Child Protective Services by providing assistance to law enforcement in the disposition of the case, that parent shall not be considered uncooperative within the meaning of this section and shall be eligible, if otherwise qualified, for restitution as a derivative victim pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 13965.

(i) 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 13964 of the Government Code, as added by Section 4.7 of Chapter 697 of the Statutes of 1998, is amended to read:

13964. (a) After having heard the evidence relevant to the application for assistance, the board shall approve the application if a preponderance of the evidence shows that as a direct result of the crime the victim or derivative victim incurred an injury which resulted in a pecuniary loss.

(b) An application for assistance may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime or the involvement of the persons whose injury or death give rise to the application.

(c) No victim shall be eligible for assistance under this article under any of the following circumstances:

(1) The board finds that the victim knowingly and willingly participated in the commission of the crime.

(2) The board finds that the victim failed to cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(d) No derivative victim shall be eligible for assistance under this article under any of the following circumstances:

(1) The board finds that the victim or derivative victim knowingly and willingly participated in the commission of the crime.

(2) The board finds that the victim or derivative victim failed to cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

(e) No application shall be denied solely because no criminal complaint has been filed, unless the complaint has not been filed for one of the reasons stated in subdivision (c) or (d). Moreover, no application shall be denied because a criminal complaint is filed, but later dismissed, if the dismissal is not for the reasons stated in subdivision (c) or (d).

(f) Once an application has been accepted by the board pursuant to subdivision (b) of Section 13962, as the application pertains to medical or medical-related expenses, the claim shall continue to be processed and either awarded or denied pursuant to this article in the event of the death of the applicant.

(g) If a nonoffending parent in a child sexual abuse case cooperates with the prosecution or Child Protective Services by providing assistance to law enforcement in the disposition of the case, that parent shall not be considered uncooperative within the meaning of this section and shall be eligible, if otherwise qualified, for restitution as a derivative victim pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 13965.

(h) This section shall become operative on January 1, 2004.

SEC. 9. Section 13964 of the Government Code, as added by Section 2.7 of Chapter 895 of the Statutes of 1998, is repealed.

SEC. 10. 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 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 domestic violence, the victim shall agree to not inform the

offender of the location of the victim's new residence and to not allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender.

(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. 10.5. 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. 11. 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 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 domestic violence, the victim shall agree to not inform the offender of the location of the victim's new residence and to not allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender.

(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. 11.5. 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. 12. Section 13965.5 of the Government Code is amended to read:

13965.5. (a) Except as provided in subdivision (b), no reimbursement shall be made for any expense that is submitted more than three years after it is incurred by the victim or derivative victim.

(b) Notwithstanding subdivision (a), reimbursement may be made for an expense submitted more than three years after the date it is incurred if the victim or derivative victim has affirmed the debt and is liable for the debt at the time the expense is submitted for reimbursement, or has paid the expense as a direct result of a crime for which a timely application has been filed.

SEC. 13. (a) Section 6.5 of this bill incorporates amendments to Section 13961.01 of the Government Code proposed by both this bill and AB 409. 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 13961.01 of the Government Code, and (3) this bill is enacted after AB 409, in which case Section 6 of this bill shall not become operative.

(b) Section 10.5 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 1019. 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 1019, in which case Section 10 of this bill shall not become operative.

(c) Section 11.5 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 1019. 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 11 of this bill shall not become operative.

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## CHAPTER 713

An act to amend Section 213.5 of the Welfare and Institutions Code, relating to juvenile court proceedings.

[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 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.

SEC. 1.5. 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. 2. Section 1.5 of this bill incorporates amendments to Section 213.5 of the Welfare and Institutions Code proposed by both this bill and SB 66. 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 SB 66, in which case Section 1 of this bill shall not become operative.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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.

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## CHAPTER 714

An act to add Article 4.5 (commencing with Section 78275) to Chapter 2 of Part 48 of the Education Code, relating to community colleges.

[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 4.5 (commencing with Section 78275) is added to Chapter 2 of Part 48 of the Education Code, to read:

### Article 4.5. Teacher Preparation Programs

78275. (a) The Legislature finds and declares all of the following:

(1) There is a significant teacher shortage in California and the nation.

(2) The teacher shortage is exacerbated by the lack of minority teacher candidates.

(3) In California, it is estimated that there will be a shortfall of between 260,000 and 300,000 teachers during the first decade of the 21st century. Nationwide, the teacher shortfall is estimated to be between 2,000,000 and 2,200,000 during that same timeframe.

(b) It is, therefore, the intent of the Legislature to create a larger pool of potential teachers in California by establishing a teacher preparation curriculum in the California Community Colleges, expanding financial incentives for community college students who wish to become teachers, and guaranteeing the transfer of students who successfully complete the community college teacher preparation curriculum to appropriate status in teacher preparation programs of the California State University.

78275.5. (a) On or before January 1, 2003, the Chancellor of the California Community Colleges, in consultation with the Chancellor of the California State University, the President of the University of California, the Association of Independent California Colleges and Universities, and with representatives of accredited colleges and universities in other states, shall submit a written report to the

Legislature on the feasibility of the development of all of the following for operation commencing with the 2004–05 academic year:

(1) The establishment of a model teacher preparation curriculum that would be available to qualified students in each community college district in the state.

(2) The establishment of financial incentives, including, but not necessarily limited to, grant, loan, and loan forgiveness programs, for community college students who wish to become teachers.

(3) The offering of community college teacher preparation courses that will provide academic credits that are fully transferable to the California State University.

(4) The guaranteeing of the transfer of students who successfully complete the community college teacher preparation curriculum to appropriate status in teacher preparation programs of the California State University.

(b) Prior to the implementation or funding of any recommendations of the feasibility study pursuant to subdivision (a), the Chancellor of the California Community Colleges shall report during the 2003–04 legislative budget hearings on the fiscal implications of implementing any or all recommendations of the feasibility study.

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## CHAPTER 715

An act to amend Sections 7685 and 7685.5 of, and to add Sections 7685.6 and 7735.5 to, the Business and Professions Code, relating to funeral directors.

[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 7685 of the Business and Professions Code is amended to read:

7685. (a) Every funeral director shall provide to any person, upon beginning discussion of prices or of the funeral goods and services offered, a written or printed list containing but not necessarily limited to the price for professional services offered, which may include the funeral director's services, the preparation of the body, the use of facilities, and the use of automotive equipment. All services included in this price or prices shall be enumerated.

(b) The list shall also include a statement indicating that the survivor of the deceased who is handling the funeral arrangements, or the

responsible party, is entitled to receive, prior to the drafting of any contract, a copy of any preneed agreement that has been signed and paid for, in full or in part, by or on behalf of the deceased, and that is in the possession of the funeral establishment.

(c) The funeral director shall also provide a statement on that list that gives the price range for all caskets offered for sale. The funeral director shall also provide a written statement or list that, at a minimum, specifically identifies a particular casket or caskets by price and by thickness of metal, or type of wood, or other construction, interior and color, in addition to other casket identification requirements under Title 16, Code of Federal Regulations, Part 453 and any subsequent version of this regulation, when a request for specific information on a casket or caskets is made in person by any individual. Prices of caskets and other identifying features such as thickness of metal, or type of wood, or other construction, interior and color, in addition to other casket identification requirements required to be given over the telephone by Title 16, Code of Federal Regulations, Part 453 and any subsequent version of this regulation, shall be provided over the telephone, if requested.

SEC. 2. Section 7685.5 of the Business and Professions Code is amended to read:

7685.5. (a) The bureau shall make available to funeral establishments and cemetery authorities a copy of a consumer guide for funeral and cemetery purchases for purposes of reproduction and distribution. The funeral and cemetery guide that is approved by the bureau, in consultation with the funeral and cemetery industries and any other interested parties, shall be made available in printed form and electronically through the Internet.

(b) A funeral establishment shall prominently display and make available to any individual who, in person, inquires about funeral or cemetery purchases, a copy of the consumer guide for funeral and cemetery purchases, reproduced as specified in subdivision (a).

(c) Prior to the drafting of a contract for funeral services, the funeral establishment shall provide, for retention, the consumer with a copy of the consumer guide for funeral and cemetery purchases described in subdivisions (a) and (b).

SEC. 3. Section 7685.6 is added to the Business and Professions Code, to read:

7685.6. (a) Every funeral establishment, prior to drafting any contract for funeral goods or services, shall present to the survivor of the deceased who is handling the funeral arrangements, or the responsible party, a statement disclosing whether or not the funeral establishment has any preneed agreement made by or on behalf of the deceased. If the funeral establishment has a preneed agreement made by or on behalf of the deceased, the statement shall also declare the establishment's

compliance with Section 7745. The disclosure statement shall be signed and dated by the representative of the funeral establishment and by the survivor or responsible party. The completed disclosure statement shall be retained by the funeral establishment for a period of time determined by the bureau, and a copy shall be given to the survivor or responsible party.

(b) The bureau shall develop a form, in consultation with the funeral industry and any other interested parties, that is separate and distinct from other forms, upon which the disclosure statement shall be made. The bureau shall make the form available to funeral establishments for purposes of reproduction and distribution, and the form shall also be available electronically through the Internet. The form shall be simple and easy to read and shall include all of the following:

(1) The definition of a preneed arrangement, adopted by the bureau by regulation.

(2) A statement of the funeral establishment's responsibilities under Section 7745.

(3) Information about how the consumer may contact the bureau for more information or how to file a complaint against a licensee.

(c) A violation of this section constitutes grounds for disciplinary action.

(d) This section shall become operative July 1, 2002.

SEC. 4. Section 7735.5 is added to the Business and Professions Code, to read:

7735.5. The preneed funeral arrangement contract shall clearly state if benefits are unavailable or limited for any reason.

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.

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## CHAPTER 716

An act to amend Section 60851 of, and to add Sections 60857 and 60859 to, the Education Code, relating to pupil testing.

[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 60851 of the Education Code is amended to read:

60851. (a) Commencing with the 2003–04 school year and each school year thereafter, each pupil completing grade 12 shall successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school. Funding for the administration of the exit examination shall be provided for in the annual Budget Act. The Superintendent of Public Instruction shall apportion funds appropriated for this purpose to enable school districts to meet the requirements of subdivisions (a), (b), and (c). The State Board of Education shall establish the amount of funding to be apportioned per test administered, based on a review of the cost per test.

(b) A pupil may take the high school exit examination in grade 9 in the 2000–01 school year only. Each pupil shall take the high school exit examination in grade 10 beginning in the 2001–02 school year and may take the examination during each subsequent administration, until each section of the examination has been passed.

(c) The exit examination shall be offered in each public school and state special school that provides instruction in grades 10, 11, or 12, on the dates designated by the Superintendent of Public Instruction. An exit examination may not be administered on any date other than those designated by the Superintendent of Public Instruction as examination days or makeup days.

(d) The results of the exit examination shall be provided to each pupil taking the examination within eight weeks of the examination administration and in time for the pupil to take any section of the examination not passed at the next administration. A pupil shall take again only those parts of the examination he or she has not previously passed and may not retake any portion of the exam that he or she has previously passed.

(e) Supplemental instruction shall be provided to any pupil who does not demonstrate sufficient progress toward passing the exit examination. To the extent that school districts have aligned their curriculum with the state academic content standards adopted by the State Board of Education, the curriculum for supplemental instruction shall reflect those standards and shall be designed to assist the pupils to succeed on the exit examination. Nothing in this chapter shall be construed to require the provision of supplemental services using resources that are not regularly available to a school or school district, including summer school instruction provided pursuant to Section 37252. In no event shall any action taken as a result of this subdivision cause or require

reimbursement by the Commission on State Mandates. Sufficient progress shall be determined on the basis of either of the following:

(1) The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 and the minimum levels of proficiency recommended by the State Board of Education pursuant to Section 60648.

(2) The pupils' grades and other indicators of academic achievement designated by the district.

SEC. 2. Section 60857 is added to the Education Code, to read:

60857. (a) The State Department of Education, with the approval of the State Board of Education, shall contract for an independent study regarding the requirement of passage of the high school exit examination as a condition of receiving a diploma of graduation and a condition of graduation from high school. A final report based on the study shall be delivered to the Governor, the chairs of the education policy committees in the Legislature, the State Board of Education, and the Superintendent of Public Instruction, on or before May 1, 2003.

(b) The scope of work and the final contract for the independent study required pursuant to this section shall be approved by the State Board of Education. The study shall include, but not be limited to, examination of whether the test development process and the implementation of standards-based instruction meet the required standards for a test of this nature.

(c) Funding for the independent study required by this section shall be provided for in the annual Budget Act.

SEC. 3. Section 60859 is added to the Education Code, to read:

60859. (a) Notwithstanding any provision of law to the contrary, on or before August 1, 2003, the State Board of Education may delay the date upon which each pupil completing grade 12 is required to successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school to a date other than the 2003–04 school year if, in reviewing the report of the independent study, the State Board of Education determines that the test development process or the implementation of standards-based instruction does not meet the required standards for a test of this nature.

(b) After August 1, 2003, the State Board of Education may not delay the date upon which each pupil completing grade 12 is required to successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school.

# CHAPTER 717

An act to amend Sections 89030.1 and 92850 of the Education Code, relating to public postsecondary education.

[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 89030.1 of the Education Code is amended to read:

89030.1. The trustees shall adopt, amend, or repeal regulations pursuant to this section instead of pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As used in this section, ''regulation'' means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by the university to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of the university. ''Regulation'' does not mean or include any form prescribed by the university or any instructions relating to the use of the form, nor does it mean or include a building standard as defined in Section 18909 of the Health and Safety Code.

(a) The trustees' office of general counsel shall review the proposed regulations for matters such as necessity, authority, clarity, consistency, reference, and nonduplication, and recommend any proposed action to the trustees. For purposes of this section, ''necessity,'' ''authority,'' ''clarity,'' ''consistency,'' ''reference,'' and ''nonduplication'' shall have the same meaning as defined by Section 11349 of the Government Code.

(b) Notice of the proposed regulations shall be sent at least 45 days prior to the public hearing to those persons who have requested notices of the meetings of the trustees and shall be available to the public in electronic format. The notice shall include the right of the public to comment orally or in writing on the proposed action either prior to or during the public hearing.

(c) At the hearing, the public shall be provided the opportunity to comment on the proposed action.

(d) The trustees shall maintain a rulemaking file containing the public notice, public comments, and minutes of the public hearing, including the action taken by the trustees.

(1) The rulemaking file shall contain a summary of each objection or recommendation made with an explanation of how the proposed action

was changed to accommodate each objection or recommendation, or the reason or reasons for making no change.

(2) The proposed regulations shall be accompanied by an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the effect of the proposed regulations with regard to the costs or savings to any state agency, the cost of any state-mandated local program as governed by Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other costs or savings of local agencies, and the costs or savings in federal funding provided to state agencies.

(e) The trustees shall transmit the regulations as finally adopted to the Secretary of State for filing. Each regulation shall be effective upon filing with the Secretary of State, and shall be published in the California Code of Regulations.

(f) This section shall become inoperative on January 1, 2003, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date.

SEC. 2. Section 92850 of the Education Code is amended to read:

92850. The Regents of the University of California are requested to develop a Governor's Teacher Scholars Program, to operate, commencing July 1, 2000, at the Berkeley and Los Angeles campuses, and at additional University of California campuses, as deemed appropriate by the University, in accordance with all of the following:

(a) Prior to July 1, 2000, the university shall develop or accomplish all of the following:

(1) A rigorous teacher preparation program that prepares teachers to work in schools with high percentages of low income or English language learners and that culminates in the award of a master's degree.

(2) Begin recruiting highly talented students who wish to become teachers.

(3) Conduct a fundraising effort to provide full scholarships to participants in the program.

(b) When the program is fully operational, a total of 400 students shall be selected to participate in the program. At least 100 of these students shall be enrolled at each of the Los Angeles and Berkeley campuses.

(c) A participant in the program shall receive a full scholarship, funded through private donations and other sources, to cover the costs of the participant related to the program. The amount of a scholarship under this section shall be limited to the amount of university fees charged to resident students and mandatory campus-based fees.

(d) A participant in the program shall be required to comply with the teaching requirements for participants in the Assumption Program of Loans for Education set forth in paragraph (5) of subdivision (b) of Section 69613.

(e) A participant who leaves classroom teaching service before his or her four-year commitment is completed shall repay that portion of his or her scholarship assistance that is equal to the proportion of the four-year commitment that has not been completed.

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## CHAPTER 718

An act to amend Sections 5000, 5015.6, 5020, 5081, 5082, 5082.1, 5082.3, 5082.4, 5087, 5088, and 5134 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, and making an appropriation therefor.

[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) of the Business and Professions Code.

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 of the Business and Professions Code, the number of applicants passing the examination under Sections 5092 and 5093 of the Business and Professions Code, the number of applicants applying and qualifying for licensure under Sections 5092 and 5093 of the Business and Professions Code, and the number of applicants and licensees applying and qualifying for an authorization to sign reports on attest engagements under Section 5095 of the Business and Professions Code. Also, it is the intent of the Legislature that prior to the next review required by Division 1.2 (commencing with Section 473) of the Business and Professions Code, the California Board of Accountancy develop regulations and procedures to implement the peer review requirement mandated by Section 5076 of the Business and Professions Code.

SEC. 2. Section 5000 of the Business and Professions Code is amended to read:

5000. There is in the Department of Consumer Affairs the California Board of Accountancy, which consists of 11 members, six of whom shall be licensees, and five of whom shall be public members who shall not be licentiates of the board or registered by the board. The board has the powers and duties conferred by this chapter.

The Governor shall appoint three of the public members, and the six licensee members as provided in this section. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member. In appointing the six licensee members, the Governor shall appoint members representing a cross section of the accounting profession with at least two members representing a small public accounting firm. For the purposes of this chapter, a small public accounting firm shall be defined as a professional firm that employs a total of no more than four licensees as partners, owners, or full-time employees in the practice of public accountancy within the State of California.

This section shall become inoperative on July 1, 2006, and as of January 1, 2007, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2007, deletes or extends the dates on which this section 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 issues identified by the Joint Legislative Sunset Review Committee and the board pursuant to implementation of new licensing requirements.

SEC. 3. Section 5015.6 of the Business and Professions Code is amended to read:

5015.6. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 5020 of the Business and Professions Code is amended to read:

5020. The board may, for the purpose of obtaining technical expertise, appoint an administrative committee of not more than 13 licensees to perform any of the following duties, and the committee may be vested with the powers of the board for those purposes:

(a) To receive and investigate complaints and to conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving

the conduct of licensees, as directed by the board or as directed by the executive officer pursuant to a delegation of authority by the board.

(b) To receive and investigate complaints and to conduct investigations or hearings, with or without the filing of any complaint, and to obtain information and evidence relating to any matter involving any violation or alleged violation of this chapter by licensees, as directed by the board or as directed by the executive officer pursuant to a delegation of authority by the board.

(c) In exercising the duties prescribed in this section, the committee shall act only in an advisory capacity, shall have no authority to initiate any disciplinary action against a licensee, and shall only be authorized to report its findings from any investigation or hearing conducted pursuant to this section to the board, or upon direction of the board, to the executive officer.

SEC. 5. 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 a 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. 6. 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. 7. 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 institutional accrediting agency that is included in a list published by the United States Secretary 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 Secretary 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. 8. 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. 9. 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 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. 10. 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. 11. 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. 12. 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. 13. 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 the examination in this chapter.

SEC. 14. 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.

(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. 15. 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. 16. 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. 17. 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. 18. 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. 19. 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 the application under Section 5092 or 5093. An applicant making 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. 20. 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 which 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. 21. 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 provisions 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 provided that:

(A) At each subsequent sitting at which the applicant seeks to pass 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 which prevented the applicant from retaking the examination 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. 22. Section 5094 is added to the Business and Professions Code, to read:

5094. (a) In order for education to be qualifying, it 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. 23. 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 qualify 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 any 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. 24. Section 5134 of the Business and Professions Code is amended to read:

5134. The amount of fees prescribed by this chapter is as follows:

(a) The fee to be charged to each applicant for the certified public accountant examination shall be fixed by the board at an amount to equal the actual cost to the board of the purchase or development of the examination, plus the estimated cost to the board of administering the examination and shall not exceed six hundred dollars ($600). The board may charge a reexamination fee equal to the actual cost to the board of the purchase or development of the examination or any of its component parts, plus the estimated cost to the board of administering the

examination and not to exceed seventy-five dollars ($75) for each part that is subject to reexamination.

(b) The fee to be charged to out-of-state candidates for the certified public accountant examination shall be fixed by the board at an amount equal to the estimated cost to the board of administering the examination and shall not exceed six hundred dollars ($600) per candidate.

(c) The application fee to be charged to each applicant for issuance of a certified public accountant certificate shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars ($250).

(d) The application fee to be charged to each applicant for issuance of a certified public accountant certificate by waiver of examination shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the certificate and shall not exceed two hundred fifty dollars ($250).

(e) The fee to be charged to each applicant for registration as a partnership or professional corporation shall be fixed by the board at an amount equal to the estimated administrative cost to the board of processing and issuing the registration and shall not exceed two hundred fifty dollars ($250).

(f) The board shall fix the biennial renewal fee so that, together with the estimated amount from revenue other than that generated by subdivisions (a) to (e), inclusive, the reserve balance in the board's contingent fund shall be equal to approximately six months of annual authorized expenditures. Any increase in the renewal fee made after July 1, 1990, shall be effective upon a determination by the board, by regulation adopted pursuant to subdivision (k), that additional moneys are required to fund authorized expenditures other than those specified in subdivisions (a) to (e), inclusive, and maintain the board's contingent fund reserve balance equal to six months of estimated annual authorized expenditures in the fiscal year in which the expenditures will occur. The biennial fee for the renewal of each of the permits to engage in the practice of public accountancy specified in Section 5070 shall not exceed two hundred fifty dollars ($250).

(g) The delinquency fee shall be 50 percent of the accrued renewal fee.

(h) The initial permit fee is an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the permit is issued, except that, if the permit is issued one year or less before it will expire, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued. The board may, by regulation, provide for the

waiver or refund of the initial permit fee where the permit is issued less than 45 days before the date on which it will expire.

(i) The fee to be charged for the certification of documents evidencing passage of the certified public accountant examination, the certification of documents evidencing the grades received on the certified public accountant examination, or the certification of documents evidencing licensure shall be twenty-five dollars ($25).

(j) The actual and estimated costs referred to in this section shall be calculated every two years using a survey of all costs attributable to the applicable subdivision.

(k) Upon the effective date of this section the board shall fix the fees in accordance with the limits of this section and, on and after July 1, 1990, any increase in any fee fixed by the board shall be pursuant to regulation duly adopted by the board in accordance with the limits of this section.

(*l*) Fees collected pursuant to subdivisions (a) to (e), inclusive, shall be fixed by the board in amounts necessary to recover the actual costs of providing the service for which the fee is assessed, as projected for the fiscal year commencing on the date the fees become effective.

SEC. 25. This bill shall become operative only if Assembly Bill 585 is enacted and becomes effective on or before January 1, 2002.

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## CHAPTER 719

An act to add and repeal Section 1021.1 of the Code of Civil Procedure, relating to attorney's fees.

[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 1021.1 is added to the Code of Civil Procedure, to read:

1021.1. (a) Reasonable attorney's fees may be awarded in an amount to be determined in the court's discretion, to a party to any civil action as provided by this section, and that award shall be made upon notice and motion by a party and shall be an element of the costs of suit.

(b) A party may be entitled, in the discretion of the court, to an award of attorney's fees under this section if all of the following conditions are met:

(1) The party has made an offer for judgment under Section 998.

(2) That offer was not accepted within the time provided in Section 998.

(3) The party to whom the offer was made thereafter failed to obtain a more favorable judgment.

The party making the offer shall be entitled to attorney's fees only for legal services rendered after the date of the offer.

(c) In exercising its discretion to award attorney's fees the court shall consider the following factors:

(1) The reasonableness or lack thereof, of a party's failure to accept an offer for judgment under Section 998 in light of the facts known to the party at the time which, in light of all of the circumstances, should have been known to the party. Reasonableness shall be determined by a consideration of at least the following matters:

(A) The then apparent merit or lack of merit in the claim that was the subject of the action.

(B) The closeness of the questions of fact and law at issue.

(C) Whether the offeror has unreasonably refused to furnish information necessary to evaluate the reasonableness of the offer.

(D) Whether the action was in the nature of a ''test case,'' presenting questions of far-reaching importance affecting nonparties.

(E) The relief that might reasonably have been expected if the claimant should prevail.

(F) The amount of the additional delay, cost, and expense that the offeror reasonably would be expected to incur if the litigation should be prolonged.

(G) Those other matters that the court may deem relevant in the interest of justice.

(2) The amount of damages and other relief sought and the results obtained for the client.

(3) The efforts made by the parties or the attorneys to settle the controversy.

(4) The existence of any bad faith or abuse of legal procedure by the parties or the attorneys.

(d) In exercising its discretion to determine the amount of attorney's fees to be awarded, the court shall consider the following factors, except that in no event shall the amount awarded exceed a reasonable fee for the services actually rendered:

(1) Customary fees in the community in which the action or proceeding is pending charged by attorneys with similar experience or expertise.

(2) The time and labor reasonably required to be spent by the attorney or attorneys.

(3) The experience and ability of the attorneys generally within the profession and also with respect to the action or proceeding.

(4) The novelty and difficulty of the questions involved and the skill required to perform the services properly.

(5) The extent to which the acceptance of the particular matter imposes extraordinary burdens on the attorney or attorneys (A) by way of precluding other employment, (B) by the time limitations imposed by the client, or (C) by the circumstances.

(6) Whether the fee is fixed or contingent.

(7) Those other factors that the court may deem relevant in the interest of justice, including any of the factors described in subdivision (c).

(e) Nothing in this section shall be construed to repeal or modify any other statutory provision for the award of attorney's fees or to diminish any express or implied contractual right which a party to a civil action may otherwise have to obtain an award of attorney's fees for the prosecution or defense of an action.

(f) No attorney's fees shall be awarded pursuant to this section in any of the following instances:

(1) Against a party who is proceeding in forma pauperis or a party whom the court has found not to have the financial ability to pay fees or who would suffer an unreasonable financial hardship if ordered to pay fees.

(2) For or against any party with respect to any cause of action under which an award for reasonable attorney's fees is authorized or required by any other federal or California statute.

(3) For or against any party with respect to any cause of action or proceeding commenced or prosecuted under Title 7 (commencing with Section 1230.010) of Part 3.

(4) For or against any party in any action in which one or more plaintiffs seek to proceed as a class under Section 382.

(5) For or against any party as to any cause of action the gravamen of which is personal injury, wrongful death, or injunctive relief.

(g) The determination under this section shall be made after the final disposition of the action.

(h) This section shall apply only in Riverside County.

(i) The Judicial Council and the Superior Court of Riverside County shall jointly assess the impact of this section upon the court to which it applies and shall report their findings to the Legislature on or before March 1, 2004. The report shall include a determination of the number of filings in the affected courts, the number of cases in which a settlement offer is made, the number of cases settled pursuant to the offer, the number of cases in which the offer is rejected and the party to whom it was made fails to obtain a more favorable judgment, and the number of cases in which attorney's fees were awarded pursuant to this section. The effectiveness of this section shall be determined based on objective data showing whether, and to what extent, this section increases the early

settlement of cases compared to the experience prior to its initial enactment in the courts to which it has applied, and the experience since its initial enactment of the courts in other counties to which it has not applied. The presiding judge and clerk of the court in which this section applies shall cooperate with the Judicial Council and the Superior Court of Riverside County in the assessment and report required by this subdivision.

(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.

(k) It is the intent of the Legislature that this section shall not be reenacted unless and until it is shown by objective data that this section independently and substantially increases the early settlement of cases.

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## CHAPTER 720

An act to amend Section 1785.15 of, to add Sections 1785.11.1, 1785.11.2, 1785.11.3, 1785.11.4, and 1785.11.6 to, and to add Title 1.81.1 (commencing with Section 1798.85) to Part 4 of Division 3 of, the Civil Code, relating to personal information.

[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 1785.11.1 is added to the Civil Code, to read:

1785.11.1. (a) A consumer may elect to place a security alert in his or her credit report by making a request in writing or by telephone to a consumer credit reporting agency. ''Security alert'' means a notice placed in a consumer's credit report, at the request of the consumer, that notifies a recipient of the credit report that the consumer's identity may have been used without the consumer's consent to fraudulently obtain goods or services in the consumer's name.

(b) A consumer credit reporting agency shall notify each person requesting consumer credit information with respect to a consumer of the existence of a security alert in the credit report of that consumer, regardless of whether a full credit report, credit score, or summary report is requested.

(c) Each consumer credit reporting agency shall maintain a toll-free telephone number to accept security alert requests from consumers 24 hours a day, seven days a week.

(d) The toll-free telephone number shall be included in any written disclosure by a consumer credit reporting agency to any consumer pursuant to Section 1785.15 and shall be printed in a clear and conspicuous manner.

(e) A consumer credit reporting agency shall place a security alert on a consumer's credit report no later than five business days after receiving a request from the consumer.

(f) The security alert shall remain in place for at least 90 days, and a consumer shall have the right to request a renewal of the security alert.

SEC. 2. Section 1785.11.2 is added to the Civil Code, to read:

1785.11.2. (a) A consumer may elect to place a security freeze on his or her credit report by making a request in writing by certified mail to a consumer credit reporting agency. "Security freeze" means a notice placed in a consumer's credit report, at the request of the consumer and subject to certain exceptions, that prohibits the consumer credit reporting agency from releasing the consumer's credit report or any information from it without the express authorization of the consumer. When a security freeze is in place, information from a consumer's credit report shall not be released to a third party without prior express authorization from the consumer. This subdivision does not prevent a consumer credit reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A consumer credit reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request from the consumer.

(c) The consumer credit reporting agency shall send a written confirmation of the security freeze to the consumer within 10 business days and shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his or her credit for a specific party or period of time.

(d) If the consumer wishes to allow his or her credit report to be accessed for a specific party or period of time while a freeze is in place, he or she shall contact the consumer credit reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) Proper identification, as defined in subdivision (c) of Section 1785.15.

(2) The unique personal identification number or password provided by the credit reporting agency pursuant to subdivision (c).

(3) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(e) A consumer credit reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to

subdivision (d), shall comply with the request no later than three business days after receiving the request.

(f) A consumer credit reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subdivision (d) in an expedited manner.

(g) A consumer credit reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(1) Upon consumer request, pursuant to subdivision (d) or (j).

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer credit reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this paragraph, the consumer credit reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his or her credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze, the consumer credit reporting agency shall disclose the process of placing and temporarily lifting a freeze, and the process for allowing access to information from the consumer's credit report for a specific party or period of time while the freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer credit reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides both of the following:

(1) Proper identification, as defined in subdivision (c) of Section 1785.15.

(2) The unique personal identification number or password provided by the credit reporting agency pursuant to subdivision (c).

(k) A consumer credit reporting agency shall require proper identification, as defined in subdivision (c) of Section 1785.15, of the person making a request to place or remove a security freeze.

(*l*) The provisions of this section do not apply to the use of a consumer report by the following:

(1) A person or entity, or a subsidiary, affiliate, or agent of that person or entity, or an assignee of a financial obligation owing by the consumer to that person or entity, or a prospective assignee of a financial obligation

owing by the consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this paragraph, ''reviewing the account'' includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subdivision (d) of Section 1785.11.2 for purposes of facilitating the extension of credit or other permissible use.

(3) Any state or local agency, law enforcement agency, trial court, or private collection agency acting pursuant to a court order, warrant, or subpoena.

(4) A child support agency acting pursuant to Chapter 2 of Division 17 of the Family Code or Title IV-D of the Social Security Act (42 U.S.C. et seq.).

(5) The State Department of Health Services or its agents or assigns acting to investigate Medi-Cal fraud.

(6) The Franchise Tax Board or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

(7) The use of credit information for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act.

(m) Nothing in this act shall prevent a consumer credit reporting agency from charging a reasonable fee to a consumer who elects to freeze, remove the freeze, or temporarily lift the freeze regarding access to a consumer credit report, except that a consumer reporting agency may not charge a fee to a victim of identity theft who has submitted a valid police report or valid Department of Motor Vehicles investigative report that alleges a violation of Section 530.5 of the Penal Code.

SEC. 3. Section 1785.11.3 is added to the Civil Code, to read:

1785.11.3. (a) If a security freeze is in place, a consumer credit reporting agency shall not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

(b) If a consumer has placed a security alert, a consumer credit reporting agency shall provide the consumer, upon request, with a free copy of his or her credit report at the time the 90-day security alert period expires.

SEC. 4. Section 1785.11.4 is added to the Civil Code, to read:

1785.11.4. The provisions of Sections 1785.11.1, 1785.11.2, and 1785.11.3 do not apply to a consumer credit reporting agency that acts only as a reseller of credit information pursuant to Section 1785.22 by assembling and merging information contained in the data base of another consumer credit reporting agency or multiple consumer credit reporting agencies, and does not maintain a permanent data base of credit information from which new consumer credit reports are produced. However, a consumer credit reporting agency acting pursuant to Section 1785.22 shall honor any security freeze placed on a consumer credit report by another consumer credit reporting agency.

SEC. 5. Section 1785.11.6 is added to the Civil Code, to read:

1785.11.6. The following entities are not required to place in a credit report either a security alert, pursuant to Section 1785.11.1, or a security freeze, pursuant to Section 1785.11.2:

(a) A check services company, which issues authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments.

(b) A demand deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution.

SEC. 6. Section 1785.15 of the Civil Code is amended to read:

1785.15. (a) A consumer credit reporting agency shall supply files and information required under Section 1785.10 during normal business hours and on reasonable notice. In addition to the disclosure provided by this chapter and any disclosures received by the consumer, the consumer has the right to request and receive all of the following:

(1) Either a decoded written version of the file or a written copy of the file, including all information in the file at the time of the request, with an explanation of any code used.

(2) A credit score for the consumer, the key factors, and the related information, as defined in and required by Section 1785.15.1.

(3) A record of all inquiries, by recipient, which result in the provision of information concerning the consumer in connection with a credit transaction that is not initiated by the consumer and which were received by the consumer credit reporting agency in the 12-month period immediately preceding the request for disclosure under this section.

(4) The recipients, including end users specified in Section 1785.22, of any consumer credit report on the consumer which the consumer credit reporting agency has furnished:

(A) For employment purposes within the two-year period preceding the request.

(B) For any other purpose within the 12-month period preceding the request.

Identification for purposes of this paragraph shall include the name of the recipient or, if applicable, the fictitious business name under which the recipient does business disclosed in full. If requested by the consumer, the identification shall also include the address of the recipient.

(b) Files maintained on a consumer shall be disclosed promptly as follows:

(1) In person, at the location where the consumer credit reporting agency maintains the trained personnel required by subdivision (d), if he or she appears in person and furnishes proper identification.

(2) By mail, if the consumer makes a written request with proper identification for a copy of the file or a decoded written version of that file to be sent to the consumer at a specified address. A disclosure pursuant to this paragraph shall be deposited in the United States mail, postage prepaid, within five business days after the consumer's written request for the disclosure is received by the consumer credit reporting agency. Consumer credit reporting agencies complying with requests for mailings under this section shall not be liable for disclosures to third parties caused by mishandling of mail after the mailings leave the consumer reporting agencies.

(3) A summary of all information contained in files on a consumer and required to be provided by Section 1785.10 shall be provided by telephone, if the consumer has made a written request, with proper identification for telephone disclosure.

(4) Information in a consumer's file required to be provided in writing under this section may also be disclosed in another form if authorized by the consumer and if available from the consumer credit reporting agency. For this purpose a consumer may request disclosure in person pursuant to Section 1785.10, by telephone upon disclosure of proper identification by the consumer, by electronic means if available from the consumer credit reporting agency, or by any other reasonable means that is available from the consumer credit reporting agency.

(c) ''Proper identification,'' as used in subdivision (b) means that information generally deemed sufficient to identify a person. Only if the consumer is unable to reasonably identify himself or herself with the information described above, may a consumer credit reporting agency

require additional information concerning the consumer's employment and personal or family history in order to verify his or her identity.

(d) The consumer credit reporting agency shall provide trained personnel to explain to the consumer any information furnished him or her pursuant to Section 1785.10.

(e) The consumer shall be permitted to be accompanied by one other person of his or her choosing, who shall furnish reasonable identification. A consumer credit reporting agency may require the consumer to furnish a written statement granting permission to the consumer credit reporting agency to discuss the consumer's file in that person's presence.

(f) Any written disclosure by a consumer credit reporting agency to any consumer pursuant to this section shall include a written summary of all rights the consumer has under this title and in the case of a consumer credit reporting agency which compiles and maintains consumer credit reports on a nationwide basis, a toll-free telephone number which the consumer can use to communicate with the consumer credit reporting agency. The written summary of rights required under this subdivision is sufficient if in substantially the following form:

''You have a right to obtain a copy of your credit file from a consumer credit reporting agency. You may be charged a reasonable fee not exceeding eight dollars ($8). There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding 60 days. The consumer credit reporting agency must provide someone to help you interpret the information in your credit file.

You have a right to dispute inaccurate information by contacting the consumer credit reporting agency directly. However, neither you nor any credit repair company or credit service organization has the right to have accurate, current, and verifiable information removed from your credit report. Under the Federal Fair Credit Reporting Act, the consumer credit reporting agency must remove accurate, negative information from your report only if it is over seven years old. Bankruptcy information can be reported for 10 years.

If you have notified a consumer credit reporting agency in writing that you dispute the accuracy of information in your file, the consumer credit reporting agency must then, within 30 business days, reinvestigate and modify or remove inaccurate information. The consumer credit reporting agency may not charge a fee for this service. Any pertinent information and copies of all documents you have concerning an error should be given to the consumer credit reporting agency.

If reinvestigation does not resolve the dispute to your satisfaction, you may send a brief statement to the consumer credit reporting agency to keep in your file, explaining why you think the record is inaccurate. The

consumer credit reporting agency must include your statement about disputed information in a report it issues about you.

You have a right to receive a record of all inquiries relating to a credit transaction initiated in 12 months preceding your request. This record shall include the recipients of any consumer credit report.

You may request in writing that the information contained in your file not be provided to a third party for marketing purposes.

You have a right to place a ''security alert'' in your credit report, which will warn anyone who receives information in your credit report that your identity may have been used without your consent and that recipients of your credit report are advised, but not required, to verify your identity prior to issuing credit. The security alert may prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that taking advantage of this right may delay or interfere with the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, insurance, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transaction, or other services, including an extension of credit at point of sale. If you place a security alert on your credit report, you have a right to obtain a free copy of your credit report at the time the 90-day security alert period expires. A security alert may be requested by calling the following toll-free telephone number: (Insert applicable toll-free telephone number).

You have a right to place a ''security freeze'' on your credit report, which will prohibit a consumer credit reporting agency from releasing any information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, insurance, government services or payments rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transaction, or other services, including an extension of credit at point of sale. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or authorize the release of your credit report for a specific party or period of time after the freeze is in place. To provide that authorization you must contact the consumer credit reporting agency and provide all of the following:

(1) The personal identification number or password.

(2) Proper identification to verify your identity.

(3) The proper information regarding the third party who is to receive the credit report or the period of time for which the report shall be available.

A consumer credit reporting agency must authorize the release of your credit report no later than three business days after receiving the above information.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

You have a right to bring civil action against anyone, including a consumer credit reporting agency, who improperly obtains access to a file, knowingly or willfully misuses file data, or fails to correct inaccurate file data.''

SEC. 7. Title 1.81.1 (commencing with Section 1798.85) is added to Part 4 of Division 3 of the Civil Code, to read:

## TITLE 1.81.1. CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS

1798.85. (a) A person or entity, not including a state or local agency, shall not do any of the following:

(1) Publicly post or publicly display in any manner an individual's social security number. ''Publicly post'' or ''publicly display'' means to intentionally communicate or otherwise make available to the general public.

(2) Print an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

(3) Require an individual to transmit his or her social security number over the Internet unless the connection is secure or the social security number is encrypted.

(4) Require an individual to use his or her social security number to access an Internet Web site, unless a password or unique personal identification number or other authentication device is also required to access the Web site.

(5) Print an individual's social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed. Notwithstanding

this provision, applications and forms sent by mail may include social security numbers.

(b) Except as provided in subdivision (c), subdivision (a) applies only to the use of social security numbers on or after July 1, 2002.

(c) Except as provided in subdivision (f), a person or entity, not including a state or local agency, that has used, prior to July 1, 2002, an individual's social security number in a manner inconsistent with subdivision (a), may continue using that individual's social security number in that manner on or after July 1, 2002, if all of the following conditions are met:

(1) The use of the social security number is continuous. If the use is stopped for any reason, subdivision (a) shall apply.

(2) The individual is provided an annual disclosure, commencing in the year 2002, that informs the individual that he or she has the right to stop the use of his or her social security number in a manner prohibited by subdivision (a).

(3) A written request by an individual to stop the use of his or her social security number in a manner prohibited by subdivision (a) shall be implemented within 30 days of the receipt of the request. There shall be no fee or charge for implementing the request.

(4) A person or entity, not including a state or local agency, shall not deny services to an individual because the individual makes a written request pursuant to this subdivision.

(d) This section does not prevent the collection, use, or release of a social security number as required by state or federal law or the use of a social security number for internal verification or administrative purposes.

(e) This section does not apply to documents that are recorded or required to be open to the public pursuant to Chapter 3.5 (commencing with Section 6250), Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of, or Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code. This section does not apply to records that are required by statute, case law, or California Rule of Court, to be made available to the public by entities provided for in Article VI of the California Constitution.

(f) (1) In the case of a health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, or a contractor as defined in Section 56.05, this section shall become operative in the following manner:

(A) On or before January 1, 2003, the entities listed in paragraph (1) of subdivision (f) shall comply with paragraphs (1), (3), (4), and (5) of subdivision (a) as these requirements pertain to individual policyholders.

(B) On or before January 1, 2004, the entities listed in paragraph (1) of subdivision (f) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) as these requirements pertain to new individual policyholders and new employer groups issued on or after January 1, 2004.

(C) On or before July 1, 2004, the entities listed in paragraph (1) of subdivision (f) shall comply with paragraphs (1) to (5), inclusive, of subdivision (a) for all policyholders and for all enrollees of the Healthy Families and Medi-Cal programs, except that individual and employer group policyholders in existence prior to January 1, 2004, shall comply upon their renewal date, but no later than July 1, 2005.

(2) A health care service plan, a provider of health care, an insurer or a pharmacy benefits manager, or a contractor shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this article are implemented on or before the dates specified in this section.

(3) Notwithstanding paragraph (2), the Director of the Department of Managed Health Care, pursuant to the authority granted under Section 1346 of the Health and Safety Code, or the Insurance Commissioner, pursuant to the authority granted under Section 12921 of the Insurance Code, and upon a determination of good cause, may grant extensions not to exceed six months for compliance by health care service plans and insurers with the requirements of this section when requested by the health care service plan or insurer. Any extension granted shall apply to the health care service plan or insurer's affected providers, pharmacy benefits manager, and contractors.

(g) If a federal law takes effect requiring the United States Department of Health and Human Services to establish a national unique patient health identifier program, a provider of health care, a health care service plan, a licensed health care professional, or a contractor, as those terms are defined in Section 56.05, that complies with the federal law shall be deemed in compliance with this section.

SEC. 8. Section 1 of this act shall become operative on July 1, 2002. Sections 2 and 3 of this act shall become operative on January 1, 2003.

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## CHAPTER 721

An act to add Division 10.9 (commencing with Section 11999.20) to the Health and Safety Code, and to amend Sections 1210, 1210.1, and 3063.1 of, and to add Sections 1210.5 and 3063.2 to, the Penal Code, relating to drug testing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 10, 2001. Filed with
Secretary of State October 11, 2001.]

I am signing Senate Bill 223, but I am deleting the $9.6 million General Fund appropriation for drug testing and thereby reducing the overall appropriation in this bill from $18 million to $8.4 million.

This bill would allow drug testing for clients treated under the Substance Abuse and Crime Prevention Act of 2000 (Proposition 36) and would provide $9.6 million General Fund and $8.4 million federal Substance Abuse Prevention and Treatment (SAPT) Block Grant funds for that purpose.

I strongly support drug testing as a component of substance abuse treatment and I am retaining the $8.4 million federal funding in the bill for that purpose. The DADP estimates that the federal SAPT funds are sufficient to meet local needs for drug testing. In addition, 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 Department of Alcohol and Drug Programs (DADP) to use $8.4 million from the federal fiscal year (FFY) 2001 SAPT award for drug testing in 2001–02. Because the need for drug testing will continue, I will include funding from the FFY 2002 award for drug testing in my 2002–03 Budget. Further, I direct the DADP to encourage the counties to make drug testing a priority for use of these federal funds.

GRAY DAVIS, Governor

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

SECTION 1. Division 10.9 (commencing with Section 11999.20) is added to the Health and Safety Code, to read:

## DIVISION 10.9. SUBSTANCE ABUSE TESTING AND TREATMENT ACCOUNTABILITY PROGRAM

11999.20. The State Department of Alcohol and Drug Programs shall administer and award grants to counties to supplement funding provided under the Substance Abuse and Crime Prevention Act of 2000 for the purpose of funding substance abuse testing for eligible offenders. Funding shall be used to supplement, rather than supplant, funding for existing substance abuse testing programs.

11999.25. (a) To be eligible for a grant pursuant to this division, a county shall have on file with the State Department of Alcohol and Drug Programs an approved plan for implementing the Substance Abuse and Crime Prevention Act of 2000.

(b) The county plan shall include a description of the process to be used for substance abuse treatment and substance abuse testing of probationers consistent with Sections 1210.1 and 1210.5, and substance abuse treatment and substance abuse testing of parolees consistent with Sections 3063.1 and 3063.2.

(c) The State Department of Alcohol and Drug Programs shall establish a fair and equitable distribution formula for allocating money to eligible counties.

SEC. 2. Section 1210 of the Penal Code is amended to read:

1210. Definitions

As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code:

(a) The term ''nonviolent drug possession offense'' means the unlawful possession, use, or transportation for personal use of any controlled substance identified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code, or the offense of being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code. The term ''nonviolent drug possession offense'' does not include the possession for sale, production, or manufacturing of any controlled substance and does not include violations of Section 4573.6 or 4573.8.

(b) The term ''drug treatment program'' or ''drug treatment'' means a state licensed and/or certified community drug treatment program, which may include one or more of the following: outpatient treatment, half-way house treatment, narcotic replacement therapy, drug education or prevention courses and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. The term ''drug treatment program'' or ''drug treatment'' includes a drug treatment program operated under the direction of the Veterans Health Administration of the Department of Veterans Affairs or a program specified in Section 8001 ; such a program shall be eligible to provide drug treatment services without regard to the licensing or certification provisions required by this subdivision. The term ''drug treatment program'' or ''drug treatment'' does not include drug treatment programs offered in a prison or jail facility.

(c) The term ''successful completion of treatment'' means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

(d) The term ''misdemeanor not related to the use of drugs'' means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in paragraph (1).

SEC. 3. Section 1210.1 of the Penal Code is amended to read:

1210.1. Possession of Controlled Substances; Probation; Exceptions

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose. Probation shall be imposed by suspending the imposition of sentence.

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) does not apply to either of the following:

(1) Any defendant who previously has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7, unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in (A) a felony conviction other than a nonviolent drug possession offense, or (B) a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

(2) Any defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony.

(3) Any defendant who:

(A) While using a firearm, unlawfully possesses any amount of (i) a substance containing either cocaine base, cocaine, heroin, methamphetamine, or (ii) a liquid, nonliquid, plant substance, or hand-rolled cigarette, containing phencyclidine.

(B) While using a firearm, is unlawfully under the influence of cocaine base, cocaine, heroin, methamphetamine or phencyclidine.

(4) Any defendant who refuses drug treatment as a condition of probation.

(5) Any defendant who (A) has two separate convictions for nonviolent drug possession offenses, (B) has participated in two separate courses of drug treatment pursuant to subdivision (a), and (C) is found by the court, by clear and convincing evidence, to be unamenable to any and all forms of available drug treatment. Notwithstanding any other provision of law, the trial court shall sentence such defendants to 30 days in jail.

(c) Within seven days of an order imposing probation under subdivision (a), the probation department shall notify the drug treatment provider designated to provide drug treatment under subdivision (a). Within 30 days of receiving that notice, the treatment provider shall prepare a treatment plan and forward it to the probation department. On a quarterly basis after the defendant begins the drug treatment program, the treatment provider shall prepare and forward a progress report on the individual probationer to the probation department.

(1) If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is unamenable to the drug treatment being provided, but may be amenable to other drug treatments or related programs, the probation department may move the court to modify the terms of probation to ensure that the defendant receives the alternative drug treatment or program.

(2) If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment programs pursuant to subdivision (b) of Section 1210, the probation department may move to revoke probation. At the revocation hearing, if it is proved that the defendant is unamenable to all drug treatment programs pursuant to subdivision (b) of Section 1210, the court may revoke probation.

(3) Drug treatment services provided by subdivision (a) as a required condition of probation may not exceed 12 months, provided, however, that additional aftercare services as a condition of probation may be required for up to six months.

(d) Dismissal of charges upon successful completion of drug treatment

(1) At any time after completion of drug treatment, a defendant may petition the sentencing court for dismissal of the charges. If the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, the conviction on which the probation was based shall be set aside and the court shall dismiss the indictment, complaint, or information against the defendant. In addition, except as provided in paragraphs (2) and (3), both the arrest and the conviction shall be deemed never to have occurred. Except as provided in paragraph (2) or (3), the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

(2) Dismissal of an indictment, complaint, or information pursuant to paragraph (1) does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

(3) Except as provided below, after an indictment, complaint, or information is dismissed pursuant to paragraph (1), the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted for the offense. Except as provided below, a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section may not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the Department of Justice and disclosed in response to any peace officer application request or any law enforcement inquiry. Dismissal of an information, complaint, or indictment under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as a peace officer as defined in Section 830, for licensure by any state or local agency, for contracting with the California State Lottery, or for purposes of serving on a jury.

(e) Violation of probation

(1) If probation is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.

(2) Non-drug-related probation violations

If a defendant receives probation under subdivision (a), and violates that probation either by being arrested for an offense that is not a nonviolent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court may modify or revoke probation if the alleged violation is proved.

(3) Drug-related probation violations

(A) If a defendant receives probation under subdivision (a), and violates that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

(B) If a defendant receives probation under subdivision (a), and for the second time violates that probation either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or is unamenable to drug treatment. In determining whether a defendant is unamenable to drug treatment, the court may consider, to the extent relevant, whether the defendant (i) has committed a serious violation of rules at the drug treatment program, (ii) has repeatedly committed violations of program rules that inhibit the defendant's ability to function in the program, or (iii) has continually refused to participate in the program or asked to be removed from the program. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

(C) If a defendant receives probation under subdivision (a), and for the third time violates that probation either by committing a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a).

(D) If a defendant on probation at the effective date of this act for a nonviolent drug possession offense violates that probation either by being arrested for a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may modify probation and impose as an additional condition participation in a drug treatment program.

(E) If a defendant on probation at the effective date of this act for a nonviolent drug possession offense violates that probation a second time either by being arrested for a nonviolent drug possession offense, or a

misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or that the defendant is unamenable to drug treatment. If the court does not revoke probation, it may modify probation and impose as an additional condition participation in a drug treatment program.

(F) If a defendant on probation at the effective date of this act for a nonviolent drug offense violates that probation a third time either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a).

(f) The term ''drug-related condition of probation'' shall include a probationer's specific drug treatment regimen, employment, vocational training, educational programs, psychological counseling, and family counseling.

SEC. 4. Section 1210.5 is added to the Penal Code, to read:

1210.5. In a case where a person has been ordered to undergo drug treatment as a condition of probation, any court ordered drug testing shall be used as a treatment tool. In evaluating a probationer's treatment program, results of any drug testing shall be given no greater weight than any other aspects of the probationer's individual treatment program.

SEC. 5. Section 3063.1 of the Penal Code is amended to read:

3063.1. Possession of Controlled Substances; Parole; Exceptions

(a) Notwithstanding any other provision of law, and except as provided in subdivision (d), parole may not be suspended or revoked for commission of a nonviolent drug possession offense or for violating any drug-related condition of parole.

As an additional condition of parole for all such offenses or violations, the Parole Authority shall require participation in and completion of an appropriate drug treatment program. Vocational training, family counseling and literacy training may be imposed as additional parole conditions.

The Parole Authority may require any person on parole who commits a nonviolent drug possession offense or violates any drug-related

condition of parole, and who is reasonably able to do so, to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) does not apply to:

(1) Any parolee who has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7.

(2) Any parolee who, while on parole, commits one or more nonviolent drug possession offenses and is found to have concurrently committed a misdemeanor not related to the use of drugs or any felony.

(3) Any parolee who refuses drug treatment as a condition of parole.

(c) Within seven days of a finding that the parolee has either committed a nonviolent drug possession offense or violated any drug-related condition of parole, the Parole Authority shall notify the treatment provider designated to provide drug treatment under subdivision (a). Within 30 days thereafter the treatment provider shall prepare an individualized drug treatment plan and forward it to the Parole Authority and to the California Department of Corrections Parole Division agent responsible for supervising the parolee. On a quarterly basis after the parolee begins drug treatment, the treatment provider shall prepare and forward a progress report on the individual parolee to these entities and individuals.

(1) If at any point during the course of drug treatment the treatment provider notifies the Parole Authority that the parolee is unamenable to the drug treatment provided, but amenable to other drug treatments or related programs, the Parole Authority may act to modify the terms of parole to ensure that the parolee receives the alternative drug treatment or program.

(2) If at any point during the course of drug treatment the treatment provider notifies the Parole Authority that the parolee is unamenable to the drug treatment provided and all other forms of drug treatment provided pursuant to subdivision (b) of Section 1210 and the amenability factors described in subparagraph (B) of paragraph (3) of subdivision (e) of Section 1210.1, the Parole Authority may act to revoke parole. At the revocation hearing, parole may be revoked if it is proved that the parolee is unamenable to all drug treatment.

(3) Drug treatment services provided by subdivision (a) as a required condition of parole may not exceed 12 months, provided, however, that additional aftercare services as a condition of parole may be required for up to six months.

(d) Violation of parole

(1) If parole is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section. Parole shall be revoked

if the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others.

(2) Non-drug-related parole violations

If a parolee receives drug treatment under subdivision (a), and during the course of drug treatment violates parole either by committing an offense other than a nonviolent drug possession offense, or by violating a non-drug-related condition of parole, and the Parole Authority acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked.

Parole may be modified or revoked if the parole violation is proved.

(3) Drug-related parole violations

(A) If a parolee receives drug treatment under subdivision (a), and during the course of drug treatment violates parole either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of parole, and the Parole Authority acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole shall be revoked if the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others. If parole is not revoked, the conditions of parole may be intensified to achieve the goals of drug treatment.

(B) If a parolee receives drug treatment under subdivision (a), and during the course of drug treatment for the second time violates that parole either by committing a nonviolent drug possession offense, or by violating a drug-related condition of parole, and the Parole Authority acts for a second time to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. If the alleged parole violation is proved, the parolee is not eligible for continued parole under any provision of this section and may be reincarcerated.

(C) If a parolee already on parole at the effective date of this act violates that parole either by committing a nonviolent drug possession offense, or a misdemeanor for simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any activity similar to those listed in paragraph (1) of subdivision (d) of Section 1210, or by violating a drug-related condition of parole, and the Parole Authority acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole shall be revoked if the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others. If parole is not revoked, the conditions of parole may be modified to include participation in a drug treatment

program as provided in subdivision (a). This paragraph does not apply to any parolee who at the effective date of this act has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7.

(D) If a parolee already on parole at the effective date of this act violates that parole for the second time either by committing a nonviolent drug possession offense, or by violating a drug-related condition of parole, and the Parole Authority acts for a second time to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. If the alleged parole violation is proved, the parolee is not eligible for continued parole under any provision of this section and may be reincarcerated.

(e) The term ''drug-related condition of parole'' shall include a parolee's specific drug treatment regimen, and, if ordered by the parole authority pursuant to this section, employment, vocational training, educational programs, psychological counseling, and family counseling.

SEC. 6. Section 3063.2 is added to the Penal Code, to read:

3063.2. In a case where a parolee had been ordered to undergo drug treatment as a condition of parole pursuant to Section 3063.1, any drug testing of the parolee shall be used as a treatment tool. In evaluating a parolee's treatment program, results of any drug testing shall be given no greater weight than any other aspects of the parolee's individual treatment program.

SEC. 7. The sum of eighteen million dollars ($18,000,000) is hereby appropriated to the State Department of Drug and Alcohol Programs as follows:

(a) Eight million four hundred thousand dollars ($8,400,000) from the Federal Substance Abuse Prevention and Treatment Block Grant for allocation to counties for expenditure during the 2001–02 fiscal year for drug testing and other purposes consistent with federal law.

(b) Nine million six hundred thousand dollars ($9,600,000) from the General Fund for expenditure to implement Division 10.9 of the Health and Safety Code.

SEC. 8. If this act becomes effective prior to July 1, 2001, it shall become operative on July 1, 2001.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to preserve the public health by successfully implementing the Substance Abuse and Crime Prevention Act of 2000, funds for drug testing must be made available immediately.

SEC. 10. (a) Notwithstanding the provisions of the Administrative Procedure Act, as set forth in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the State Department of Alcohol and Drug Programs may, until June 30, 2002, implement the applicable provisions of Section 11999.25 of the Health and Safety Code by means of a letter to all county lead agencies or similar instructions from the Director of Alcohol and Drug Programs.

(b) (1) The Director of Alcohol and Drug Programs shall adopt regulations, as otherwise necessary, to implement the applicable provisions of Section 11999.25 of the Health and Safety Code, no later than July 1, 2002.

(2) Emergency regulations to implement the applicable provisions of this act may be adopted by the Director of Alcohol and Drug Programs in accordance with the Administrative Procedure Act.

(3) 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, safety, or general welfare.

(4) Initial emergency regulations and the first readoption of those emergency regulations shall be exempt from review by the Office of Administrative Law.

(5) The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days.

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## CHAPTER 722

An act to amend Sections 60601, 60605, 60607, 60630, 60641, 60642, 60642.5, 60643, 60643.5, and 60650 of, to add Sections 60605.6 and 60653 to, and to repeal Sections 60609 and 60640.1 of, the Education Code, relating to pupil testing.

[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. (a) It is the intent of the Legislature to provide a system of individual pupil assessments that meets the different needs of the state, school administrators, teachers, parents and guardians, and pupils.

(b) It is the further intent of the Legislature that the pupil assessment system do each of the following:

(1) Emphasize standards-based tests that measure the achievement of pupils on the state's academic content and performance standards relative to nationally normed tests.

(2) Minimize the amount of instructional time spent on statewide testing by eliminating redundant tests and consolidating different state testing programs if the consolidated examination can achieve the purpose of the original examinations with equal rigor, reliability, and validity.

(3) Provide accountability in the elementary grades in history/social science and science with the addition of a standards-based test in each of these core areas in at least one upper elementary grade.

(4) Use a nationally normed test in high school science until a standards-based test can be developed that is appropriate for the range of science classes offered in California high schools for which there are no standards-based end-of-course examinations.

(5) Create a standards-based mathematics test available to pupils in grades 8 and 9 who have not yet completed coursework that would prepare them to take the Algebra I or Integrated I standards-based mathematics test.

(6) Decrease the amount of time in the statewide testing system dedicated to the nationally normed test by using shortened test forms where appropriate; by 2003, eliminates the history/social science nationally normed test in grades 9 to 11, inclusive, and uses a short form of a nationally normed mathematics test in grades 2 to 11, inclusive. No later than 2005, the State Board of Education shall make a finding regarding the feasibility of using a short form of a nationally normed test in English/language arts in grades 2 to 11, inclusive.

(7) Restructure the Golden State Examination to increase the potential use of this examination. Possible additional uses include determining college placement, credit, and admission. To reduce testing time and in subjects for which a California Standards Test and a Golden State Examination exist, a Golden State Examination should consist of some portion of a California Standards Test and additional Golden State Examination items. It is further the intent of the Legislature that the Golden State Examination program be continued only to the extent that the examination meets the same psychometric standards of other nationally accepted examinations used to measure advanced academic achievement.

(8) Allow the Superintendent of Public Instruction to recommend, and the State Board of Education to approve, a statewide master contract to execute the state testing system.

(9) Conduct a series of technical evaluations to ensure system coordination and coherency as well as technical validity and reliability. These evaluations shall include analyses regarding how well each of the

components of the state testing system provide information about the degree to which pupils are learning the content of the state standards.

SEC. 2. Section 60601 of the Education Code is amended to read:

60601. This chapter shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2005, deletes or extends that date.

SEC. 3. Section 60605 of the Education Code is amended to read:

60605. (a) (1) (A) Not later than January 1, 1998, the State Board of Education shall adopt statewide academically rigorous content standards, pursuant to the recommendations of the Commission for the Establishment of Academic Content and Performance Standards, in the core curriculum areas of reading, writing, and mathematics to serve as the basis for assessing the academic achievement of individual pupils and of schools, school districts, and the California education system. Not later than November 1, 1998, the State Board of Education shall adopt these standards in the core curriculum areas of history/social science and science.

(B) The board shall adopt statewide performance standards in the core curriculum areas of reading, writing, mathematics, history/social science, and science based on the recommendations made by the Superintendent of Public Instruction and a contractor or contractors.

(C) The State Board of Education shall require the contractor or contractors to submit performance standards to the Superintendent of Public Instruction and the board not later than a specified date that allows sufficient opportunity for the Superintendent of Public Instruction to make a recommendation to the board and for the board to conduct regional hearings prior to the adoption of the performance standards.

(2) (A) The State Board of Education may modify any proposed content standards or performance standards prior to adoption and may adopt content and performance standards in individual core curriculum areas as those standards are submitted to the board. The performance standards shall be established against specific grade level benchmarks of academic achievement for each subject area tested and shall be based on the knowledge and skills that pupils will need in order to succeed in the information-based, global economy of the 21st century. These skills shall not include personal behavioral standards or skills, including, but not limited to, honesty, sociability, ethics, or self-esteem. The standards adopted pursuant to this section shall be for the purpose of guiding state decisions regarding the development, adoption, and approval of assessment instruments pursuant to this chapter and shall not be construed to mandate any actions or activities by school districts.

(B) Because these standards are models, the adoption of these standards is not subject to the Administrative Procedure Act. This subparagraph is declaratory of existing law.

(3) Before adopting academic content and performance standards, the board shall hold regional hearings for the purpose of giving parents and other members of the public the opportunity to comment on the proposed standards.

(b) (1) The State Board of Education shall require the State Department of Education to notify publishers of the opportunity to submit, for consideration by the State Board of Education pursuant to Section 60642, tests of achievement that include all of the basic academic skills identified in subdivision (c) of Section 60603 in grades 2 to 8, inclusive, and the core curriculum areas of English and language arts, mathematics, and science in grades 9 to 11, inclusive.

(2) The Superintendent of Public Instruction shall recommend to the State Board of Education which achievement test to adopt pursuant to subdivision (b) of Section 60642.

(c) (1) The State Board of Education shall ensure that the statewide assessment system adopted pursuant to this chapter yields valid, reliable individual pupil scores and, where applicable, aggregate school scores, school district scores, and statewide scores of pupils and assesses basic academic skills and content standards, including the use of a direct writing assessment or other applied academic skills if deemed valid and reliable and if resources are made available for their use.

(2) Nothing in this subdivision shall be construed to prevent the State Board of Education from developing or adopting an assessment instrument that also contains assessments of basic academic skills.

(d) To the extent feasible and as otherwise required, the State Board of Education shall ensure that assessments developed, or contracted for pursuant to Section 60642.5, by the state are aligned with the statewide content and performance standards adopted pursuant to subdivision (a). The State Department of Education, with the approval of the State Board of Education, shall periodically contract for a review of the achievement test for conformance with these standards.

(e) After adopting statewide content and performance standards, the State Board of Education shall review the existing curriculum frameworks for conformity with the new statewide standards and shall modify the curriculum frameworks where appropriate to bring them into alignment with the standards.

(f) The State Board of Education shall adopt regulations for the conduct and administration of the testing and assessment program.

(g) The State Board of Education shall adopt a regulation for minimum security procedures that test and assessment publishers and school districts must follow to ensure the security and integrity of test and assessment questions and materials.

SEC. 4. Section 60605.6 is added to the Education Code, to read:

60605.6. Subject to the availability of funds in the annual Budget Act for this purpose, the Superintendent of Public Instruction, upon approval of the State Board of Education, shall contract for the development and distribution of workbooks, as follows:

(a) One workbook to be distributed to all pupils in the 10th grade. This workbook shall contain information on the proficiency levels that must be demonstrated by pupils on the high school exit examination described in Chapter 9 (commencing with Section 60850). The workbook also shall contain sample questions, with explanations describing how these sample questions test pupil knowledge of the language arts and mathematics content standards adopted by the State Board of Education pursuant to Section 60605.

(b) Separate workbooks for each of grades 2 to 11, inclusive. Each pupil in grades 2 to 11, inclusive, who is required to take the achievement tests described in Section 60642 or Section 60642.5 shall receive a copy of the workbook designed for the same grade level in which the pupil is enrolled. These workbooks shall contain material to assist pupils and their parents with standards-based learning, including the grade appropriate academic content standards adopted by the State Board of Education pursuant to Section 60605 and sample questions that require knowledge of these standards to answer. The workbooks also shall describe how the sample questions test knowledge of the State Board of Education adopted academic content standards.

SEC. 5. Section 60607 of the Education Code is amended to read:

60607. (a) Each pupil shall have an individual record of accomplishment by the end of grade 12 that includes the results of the achievement test required and administered annually as part of the standardized testing and reporting program established pursuant to Article 4 (commencing with Section 60640), results of end-of-course exams he or she has taken, and whatever vocational education certification exams he or she chose to take.

(b) It is the intent of the Legislature that school districts and schools use the results of the academic achievement tests administered annually as part of the statewide pupil assessment program to provide support to pupils and parents or guardians in order to assist pupils in strengthening their development as learners, and thereby to improve their academic achievement and performance in subsequent assessments.

(c) Any pupil results or record of achievement shall be private, and may not be released to any person, other than the pupil's parent or guardian and a teacher, counselor, or administrator directly involved with the pupil, without the express written consent of the parent or guardian of the pupil if the pupil is a minor or the pupil if the pupil has reached the age of majority or is emancipated.

SEC. 6. Section 60609 of the Education Code is repealed.

SEC. 7. Section 60630 of the Education Code is amended to read:

60630. (a) The Superintendent of Public Instruction shall prepare and submit an annual report to the Legislature and the State Board of Education containing an analysis of the results and test scores of the assessment of applied academic skills adopted pursuant to subdivision (c) of Section 60605 and the achievement test designated pursuant to Section 60642. The report simultaneously shall be made available in an electronic medium on the Internet. The analysis may include, but need not be limited to, the following factors:

(1) Financial characteristics, including specially funded programs.

(2) Pupil and parent characteristics.

(3) Staff characteristics.

(4) Instructional methodologies and materials.

(b) School districts shall submit to the State Department of Education whatever information the department deems necessary to carry out this section.

SEC. 8. Section 60640.1 of the Education Code is repealed.

SEC. 9. Section 60641 of the Education Code is amended to read:

60641. (a) The State Department of Education shall ensure that school districts comply with each of the following requirements:

(1) The achievement test designated pursuant to Section 60642 and the standards-based achievement test provided for in Section 60642.5 are scheduled to be administered to all pupils during the period prescribed in subdivision (b) of Section 60640.

(2) The individual results of each pupil test administered pursuant to Section 60640 shall be reported, in writing, to the pupil's parent or guardian. The written report shall include a clear explanation of the purpose of the test, the pupil's score, and its intended use by the school district. Nothing in this subdivision shall be construed to require teachers to prepare individualized explanations of each pupil's test score.

(3) The individual results of each pupil test administered pursuant to Section 60640 shall also be reported to the pupil's school and teachers. The school district shall include the pupil's test results in his or her pupil records. However, except as provided in this section, individual pupil test results may only be released with the permission of the pupil's parent or guardian.

(4) The districtwide, school-level, and grade-level results of the STAR Program in each of the grades designated pursuant to Section 60640, but not the score or relative position of any individually ascertainable pupil, shall be reported to the governing board of the school district at a regularly scheduled meeting, and the countywide, school-level, and grade-level results for classes and programs under the jurisdiction of the county office of education shall be similarly reported to the county board of education at a regularly scheduled meeting.

(b) The publisher designated pursuant to Section 60642 and the publisher of the standards-based achievement tests provided for in Section 60642.5 shall make the individual pupil, grade, school, school district, and state results available to the State Department of Education pursuant to paragraph (9) of subdivision (a) of Section 60643 by August 8 of each year in which the achievement test is administered for those schools for which the last day of test administration, including makeup days, is on or before June 25. The State Department of Education shall make the grade, school, school district, and state results available on the Internet by August 15 of each year in which the achievement test is administered for those schools for which the last day of test administration, including makeup days, is on or before June 25.

(c) The department shall take all reasonable steps to ensure that the results of the test for all pupils who take the test by June 25 are made available on the Internet by August 15, as set forth in subdivision (b).

SEC. 10. Section 60642 of the Education Code is amended to read:

60642. (a) The Superintendent of Public Instruction and the State Board of Education may consider any evaluations of independent experts who have not been employed by a test publisher in the preceding 12 months regarding the suitability of the achievement tests submitted by publishers as required by subdivision (b) of Section 60605 for use as part of the STAR Program established by this article.

(b) Based upon a review of the achievement tests submitted and the recommendation made by the Superintendent of Public Instruction pursuant to subdivision (b) of Section 60605, the State Board of Education, in its sole discretion, based on the considerations set forth in Section 60644, shall designate for use as part of the STAR Program a single test in grades 2 to 11, inclusive.

(c) The State Board of Education shall ensure that the achievement test designated pursuant to subdivision (b) contains the subject areas specified in subdivision (c) of Section 60603 for grades 2 to 8, inclusive, and the core curriculum areas of English and language arts, mathematics, and science for grades 9 to 11, inclusive.

(d) The State Board of Education is hereby authorized to designate the achievement test to be administered pursuant to this article for more than one academic year subject to the availability of funds.

(e) The board shall minimize, to the extent it deems feasible, the amount of testing time required by the assessment in subdivision (b) for those content areas for which there also exists a standards-based examination as provided for pursuant to Section 60642.5.

SEC. 11. Section 60642.5 of the Education Code is amended to read:

60642.5. (a) The Superintendent of Public Instruction, with approval of the State Board of Education, shall provide for the

development of an assessment instrument, to be called the California Standards Tests, that measures the degree to which pupils are achieving the academically rigorous content standards and performance standards, to the extent standards have been adopted by the State Board of Education. This standards-based achievement test shall contain the subject areas specified in subdivision (c) of Section 60603 for grades 2 to 8, inclusive, and shall include an assessment in history/social science in at least one elementary or middle school grade level selected by the State Board of Education and science in at least one elementary or middle school grade level selected by the State Board of Education, and the core curriculum areas specified in subdivision (e) of Section 60603 for grades 9 to 11, inclusive, and shall include, at a minimum, a direct writing assessment once in elementary school and once in middle or junior high school and other items of applied academic skill if deemed valid and reliable and if resources are made available for their use.

(b) In approving a contract for the development or administration of the California Standards Tests, the State Board of Education shall consider each of the following criteria:

(1) The ability of the contractor to produce valid, reliable individual pupil scores.

(2) The ability of the contractor to report results pursuant to subdivision (a) of Section 60643 by August 8.

(3) The ability of the contractor to ensure alignment between the standards-based achievement test and the academically rigorous content and performance standards as those standards are adopted by the State Board of Education. This criterion shall include the ability of the contractor to implement a process to establish and maintain alignment between the test items and the standards.

(4) The per pupil cost estimates of developing, and, if appropriate, administering the proposed assessment with a system to facilitate the determination of future per pupil cost determinations.

(5) The contractor's procedures to ensuring the security and integrity of test questions and materials.

(6) The contractor's experience in successfully conducting testing programs adopted and administered by other states. For experience to be considered, the number of grades and pupils tested shall be provided.

(c) The standards-based achievement tests may use items from other tests including items from the achievement test designated pursuant to Section 60642.

SEC. 12. Section 60643 of the Education Code is amended to read:

60643. (a) To be eligible for consideration under Section 60642 or 60642.5 by the State Board of Education, test publishers shall agree in writing each year to meet the following requirements, as applicable, if selected:

(1) Enter into an agreement, pursuant to subdivision (e) or (f), with the State Department of Education by October 15.

(2) With respect to selection under Section 60642.5, align the standards-based achievement test provided for in Section 60642.5 to the academically rigorous content and performance standards adopted by the State Board of Education.

(3) Comply with subdivisions (c) and (d) of Section 60645.

(4) Provide valid and reliable individual pupil scores only in the content areas specified in subdivision (c) of Section 60642 to parents or guardians, teachers, and school administrators.

(5) Provide valid and reliable aggregate scores only in the content areas specified in subdivision (c) of Section 60642 to school districts and county boards of education in all of the following forms and formats:

(A) Grade level.

(B) School level.

(C) District level.

(D) Countywide.

(E) Statewide.

(F) Comparison of statewide scores relative to other states.

(6) Provide disaggregated scores, based on limited-English-proficient status and nonlimited-English-proficient status. For purposes of this section, pupils with ''nonlimited-English-proficient status'' shall include the total of those pupils who are English-only pupils, fluent-English-proficient pupils, and redesignated fluent-English-proficient pupils. These scores shall be provided to school districts and county boards of education in the same forms and formats listed in paragraph (5).

(7) Provide disaggregated scores by pupil gender and provide disaggregated scores based on whether pupils are economically disadvantaged or not. These disaggregated scores shall be in the same forms and formats as listed in paragraph (5). In any one year, the disaggregation shall entail information already being collected by school districts, county offices of education, or charter schools.

(8) Provide disaggregated scores for pupils who have individualized education programs and have enrolled in special education, to the extent required by federal law. These scores shall be provided in the same forms and formats listed in paragraph (5). This section may not be construed to exclude the scores of special education pupils from any state or federal accountability system.

(9) Provide information listed in paragraphs (5), (6), (7), and (8) to the State Board of Education and the State Department of Education in the medium requested by each entity, respectively.

(b) It is the intent of the Legislature that the publisher work with the Superintendent of Public Instruction and the State Board of Education

in developing a methodology to disaggregate statewide scores as required in paragraphs (6) and (7) of subdivision (a), and in determining which variable indicated on the STAR testing document shall serve as a proxy for ''economically disadvantaged'' status pursuant to paragraph (7).

(c) Access to any information about individual pupils or their families shall be granted to the publisher only for purposes of correctly associating test results with the pupils who produced those results or for reporting and disaggregating test results as required by this section. School districts are prohibited from excluding a pupil from the test if a parent or parents decline to disclose income. Nothing in this chapter shall be construed to abridge or deny rights to confidentiality contained in the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) or other applicable provisions of state and federal law that protect the confidentiality of information collected by educational institutions.

(d) Notwithstanding any other provision of law, the publisher of the achievement test designated pursuant to Section 60642, the publisher of the standards-based achievement test provided for in Section 60642.5, or any contractor under subdivision (f) shall comply with all of the conditions and requirements enumerated in subdivision (a), as applicable, to the satisfaction of the State Board of Education.

(e) (1) A publisher may not provide a test described in Section 60642, 60642.5, or 60650 or in subdivision (f) of Section 60640 for use in California public schools unless the publisher enters into a written contract with the State Department of Education as set forth in this subdivision.

(2) The State Department of Education shall develop, and the State Board of Education shall approve, a contract to be entered into with any publisher pursuant to paragraph (1). The department may develop the contract through negotiations with the publisher.

(3) For purposes of the contracts authorized pursuant to this subdivision, the State Department of Education is exempt from the requirements of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(4) The contracts shall include provisions for progress payments to the publisher for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the amount budgeted for each separate and distinct component task provided for in each contract shall be withheld pending final completion of all component tasks by that publisher. The total amount withheld pending final completion shall not exceed 10 percent of the total contract price.

(5) The contracts shall require liquidated damages to be paid by the publisher in the amount of up to 10 percent of the total cost of the contract for any component task that the publisher through its own fault or that of its subcontractors fails to substantially perform by the date specified in the agreement.

(6) The contracts shall establish the process and criteria by which the successful completion of each component task shall be recommended by the State Department of Education and approved by the State Board of Education.

(7) The publishers shall submit, as part of the contract negotiation process, a proposed budget and invoice schedule, that includes a detailed listing of the costs for each component task and the expected date of the invoice for each completed component task.

(8) The contracts shall specify the following component tasks, as applicable, that are separate and distinct:

(A) Development of new tests or test items as required by paragraph (2) of subdivision (a).

(B) Test materials production or publication.

(C) Delivery of test materials to school districts.

(D) Test processing, scoring, and analyses.

(E) Reporting of test results to the school districts, including, but not limited to, all reports specified in this section.

(F) Reporting of test results to the State Department of Education, including, but not limited to, the electronic files required pursuant to this section.

(G) All other analyses or reports required by the Superintendent of Public Instruction to meet the requirements of state and federal law and set forth in the agreement.

(9) The contracts shall specify the specific reports and data files, if any, that are to be provided to school districts by the publisher and the number of copies of each report or file to be provided.

(10) The contracts shall specify the means by which any delivery date for materials to each school district shall be verified by the publisher and the school district.

(11) School districts may negotiate a separate agreement with the publisher for any additional materials or services not within the contracts specified in this subdivision, including, but not limited to, the administration of the tests to pupils in grade levels other than grades 2 to 11, inclusive. Any separate agreement is not within the scope of the contract specified in this subdivision.

(f) The State Department of Education, with approval of the State Board of Education, may enter into a separate contract for the development or administration of any test authorized pursuant to this part, including, but not limited to, item development, coordination of

tests, assemblage of tests or test items, scoring, or reporting. The liquidated damages provision set forth in paragraph (5) of subdivision (e) shall apply to any contract entered into pursuant to this subdivision.

SEC. 13. Section 60643.5 of the Education Code is amended to read:

60643.5. (a) A school shall be reimbursed by the test publisher selected pursuant to this article for any unexpected expenses incurred due to scheduling changes that resulted from the late delivery of testing materials in connection with the STAR Program.

(b) The State Department of Education shall monitor and report to the State Board of Education regarding the publisher's production, processing, and delivery system to ensure that a timely delivery of testing materials to all schools occurs during the 1999–2000 testing cycle.

SEC. 14. Section 60653 is added to the Education Code, to read:

60653. To reduce testing time and in subjects for which a California Standards Test and a Golden State Examination exist, a Golden State Examination shall consist of some portion of the California Standards Test and additional Golden State Examination items.

SEC. 15. Section 60650 of the Education Code is amended to read:

60650. There is hereby established the Golden State Examination Program for the purpose of administering the Golden State Examination to pupils enrolled in public high schools. The Golden State Examination shall measure advanced pupil achievement on the academically rigorous content standards adopted by the State Board of Education and shall be administered as an augmentation to the standards test provided in Section 60642.5 unless there is no standards test in the subject area being tested. With the approval of the State Board of Education, the State Department of Education shall, in consultation with the California State University System and the University of California, contract for a study to determine if Golden State Examinations meet the same psychometric standards of nationally accepted examinations used for determining college placement, credit, or admission. The study shall be completed by December 15, 2003. A special honors designation and insignia shall be adopted on a high school diploma for qualifying pupils. Participation in the Golden State Examination Program shall be voluntary on the part of each school district maintaining a high school. The governing board of each participating school district shall determine the extent to which pupils of the district shall be required to participate in the Golden State Examination.

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# CHAPTER 723

An act relating to the payment of claims against the State of California, making an appropriation therefor, 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. Of the funds provided pursuant to Schedules (1), (16), and (17) of Item 6110-485 of Section 2 of the Budget Act of 2001, the Controller shall allocate the amounts as follows:

(a) Five million four hundred fifty-six thousand dollars ($5,456,000) for the payment of claims from school districts, except for community colleges, pursuant to subdivisions (c) and (h) of Section 48980 of the Education Code (Annual Parent Notification-Staff Development, CSM 97-TC-24), for costs incurred from July 1, 1997, to June 30, 2002, inclusive.

(b) (1) Sixty-six million seven hundred twenty-eight thousand dollars ($66,728,000) for the payment of claims from school districts, except for community college districts, pursuant to former Section 38048 of, and Sections 39831.3 and 39831.5 of, the Education Code and Section 22112 of the Vehicle Code (School Bus Safety Act II, CSM 97-TC-22), for costs incurred from July 1, 1996, to June 30, 2002, inclusive.

(2) On or before March 18, 2002, the State Auditor shall conduct an audit of the School Bus Safety Act II (CSM-97-TC-22) mandate to provide independently developed and verified information related to the cost of claims associated with the mandate. The State Auditor shall report the results of the audit and recommendations to the appropriate budget subcommittees of each house, the Legislative Analyst, and the Department of Finance on or before March 30, 2002. In conducting the audit, the State Auditor shall do all of the following:

(A) Review and evaluate the laws, rules, and regulations applicable to the issues.

(B) Review the Commission On State Mandates parameters and guidelines to determine if they adequately define the mandate's reimbursable activities and provide sufficient guidance for claiming reimbursable costs.

(C) Examine any prior reviews of the cost of claims.

(D) Examine a sample of the cost of claims to determine if the expenditures and activities that are claimed are consistent with the

parameters and guidelines for reimbursement that have been adopted by the Commission on State Mandates.

(E) Evaluate the commission's methodology for estimating the future costs of this mandate.

(3) Payment of claims pursuant to this subdivision shall not be made by the Controller until the time the State Auditor has completed the audit required by paragraph (2) to determine whether the parameters and guidelines related to the act are consistent with the original intent of the Legislature and the Department of Finance has approved the release of these funds.

(4) The Department of Finance shall not approve the release of these funds sooner than 30 days after notification in writing of the necessity therefor to the chairperson of the budget subcommittee of each house that considers education budgets. The notification shall include a statement from the Controller specifying the extent to which the proposed release of funds is consistent with, or departs from, the findings of the State Auditor.

(c) Thirty-one million two hundred thirty-nine thousand dollars ($31,239,000) for the payment of claims from school districts, except for community college districts, pursuant to Sections 628.2 and 628.6 of the Penal Code and Sections 700 to 704, inclusive, of Title 5 of the California Code of Regulations, and the Department of Education Guidelines for School Crimes Reporting (School Crimes Reporting II, CSM 97-TC-03), for costs incurred from July 1, 1996, to June 30, 2002, inclusive.

SEC. 2. The sum of eighty-nine million forty-two thousand dollars ($89,042,000) is hereby appropriated from the General Fund, where a fund is not otherwise specified, and the State Transportation Fund, where specified, to the Controller for allocation as follows:

(a) Fifty million dollars ($50,000,000) for the payment of claims from cities, counties, and a city and county pursuant to Sections 3300 to 3310, inclusive, of the Government Code (Peace Officers Procedural Bill of Rights, CSM-4499) for costs incurred from July 1, 1994, to June 30, 2002, inclusive. The remaining one hundred two million five hundred six thousand dollars ($102,506,000) of the statewide cost estimate adopted by the Commission on State Mandates shall be paid in subsequent years, as stated in the Department of Finance's letter to the Legislature dated May 17, 2001.

(b) One million dollars ($1,000,000) for the payment of claims from counties and a city and county pursuant to Section 7576 of the Government Code and Sections 60000 to 60610, inclusive, of Title 2 of the California Code of Regulations, and California Department of Mental Health Information Notice Number 86-29 (Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health

Services, CSM 97-TC-05) for costs incurred from January 1, 1997, to June 30, 2002, inclusive. The remaining twenty-three million one hundred sixty-four thousand dollars ($23,164,000) of the statewide cost estimate adopted by the Commission on State Mandates shall be paid in subsequent years.

(c) Thirty-eight million dollars ($38,000,000) from the General Fund and forty-two thousand dollars ($42,000) from the State Transportation Fund for the payment of deficiencies in prior year appropriations, which includes payment of interest in the amount of five million five hundred sixty thousand dollars ($5,560,000) on those deficiencies, incurred through June 30, 2001, pursuant to Section 17561.5 of the Government Code, as detailed in the Controller's letter of May 10, 2001, and the Department of Finance's letter to the Legislature dated May 17, 2001.

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 settle claims by school districts and local agencies against the state for mandated costs associated with implementing designated provisions of law, and to end hardship to those school districts and local agencies at the earliest possible time, it is necessary for this act to take effect immediately.

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## CHAPTER 724

An act to amend Sections 64000 and 64001 of the Education Code, relating to categorical programs.

[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. (a) The Legislature finds and declares that:

(1) Pupil achievement of the academic content standards established by the Leroy Greene California Assessment of Academic Achievement Act is the top priority of the education system in California.

(2) The state has a legal responsibility to support compliance with state and federal laws and regulations through education, monitoring, technical assistance, and enforcement.

(3) All state mechanisms, including funding applications, program monitoring, program evaluation, pupil assessment, complaints

management, technical assistance, and enforcement, need to be aligned in a systematic accountability system.

(4) The quality of program monitoring can legitimately be differentiated based on history of compliance with state and federal law and regulations, the number of verified complaints, and valid evidence of current academic achievement.

(b) It is the intent of the Legislature to enact legislation that aligns the compliance mechanisms, including the coordinated compliance review, funding applications, program monitoring, program evaluation, pupil assessment, complaints management, and technical assistance of the State Department of Education with the accountability system established by Chapter 6.1 (commencing with Section 52050) of Part 28 of the Education Code.

(c) It is the intent of the Legislature to enact legislation that requires the State Department of Education to base coordinated compliance reviews and other compliance functions on local educational agencies' histories of compliance with state and federal law and regulations, the number of verified complaints, and valid evidence of current academic achievement.

(d) It is the intent of the Legislature that this act save school districts time and expense in meeting planning and compliance requirements for state and federal categorical programs, and that state compliance resources are used in the most effective manner.

(e) It is further the intent of the Legislature that, wherever feasible, plans required by categorical programs not subject to this part be included in the Single Plan for Pupil Achievement.

SEC. 2. Section 64000 of the Education Code is amended to read:

64000. (a) The provisions of this part shall apply to applications for funds under the following categorical programs:

(1) School library programs established pursuant to Chapter 2 (commencing with Section 18100) of Part 11.

(2) Staff development centers and programs established pursuant to Chapter 3.1 (commencing with Section 44670) of Part 25.

(3) School improvement programs established pursuant to Chapter 6 (commencing with Section 52000) of Part 28.

(4) Bilingual education programs pursuant to Article 3 (commencing with Section 52160) of Chapter 7 of Part 28.

(5) School-based coordinated categorical programs established pursuant to Chapter 12 (commencing with Section 52800) of Part 28.

(6) Economic Impact Aid programs established pursuant to Chapter 1 (commencing with Section 54000) of Part 29.

(7) The Miller-Unruh Basic Reading Act of 1965 pursuant to Chapter 2 (commencing with Section 54100) of Part 29.

(8) Compensatory education programs established pursuant to Chapter 4 (commencing with Section 54400) of Part 29, except for programs for migrant children pursuant to Article 3 (commencing with Section 54440) of Chapter 4 of Part 29.

(9) Programs providing assistance to disadvantaged pupils under Section 6312 of Title 20 of the United States Code, and programs providing assistance for neglected or delinquent pupils who are at risk of dropping out of school, as funded by Section 6421 of Title 20 of the United States Code.

(10) Capital expense funding, as provided by Title I of the Improving America's Schools Act of 1994 (20 U.S.C. Sec. 1001 et seq.).

(11) Tenth grade counseling programs established pursuant to Section 48431.6.

(12) California Peer Assistance and Review Programs for Teachers established pursuant to Article 4.5 (commencing with Section 44500) of Chapter 3 of Part 25.

(13) Professional development programs established pursuant to Section 6601 of Title 20 of the United States Code.

(14) Innovative Program Strategies Programs established pursuant to Section 7303 of Title 20 of the United States Code.

(15) Programs established under the federal Class Size Reduction Initiative (P.L. 106-554).

(16) Programs for tobacco use prevention funded by Section 7115 of Title 20 of the United States Code.

(17) School safety and violence prevention programs, established pursuant to Article 3.6 (commencing with Section 32228) of Chapter 2 of Part 19.

(18) Safe and Drug Free Schools and Communities programs established pursuant to Section 7113 of Title 20 of the United States Code.

(b) Each school district that elects to apply for any of these state funds shall submit to the State Department of Education, for approval by the State Board of Education, a single consolidated application for approval or continuance of those state categorical programs subject to this part.

(c) Each school district that elects to apply for any of these federal funds may submit to the State Department of Education for approval, by the State Board of Education, a single consolidated application for approval or continuance of those federal categorical programs subject to this part.

SEC. 3. Section 64001 of the Education Code is amended to read:

64001. (a) Notwithstanding any other provision of law, school districts shall not be required to submit to the State Department of Education, as part of the consolidated application, school plans for categorical programs subject to this part. School districts shall assure,

in the consolidated application, that the Single Plan for Pupil Achievement established pursuant to subdivision (d) has been prepared in accordance with law, that schoolsite councils have developed and approved a plan, to be known as the Single Plan for Pupil Achievement for schools participating in programs funded through the consolidated application process, and any other school program they choose to include, and that school plans were developed with the review, certification, and advice of any applicable school advisory committees. The Single Plan for Pupil Achievement may also be referred to as the Single Plan for Student Achievement. The consolidated application shall also include certifications by appropriate district advisory committees that the application was developed with review and advice of those committees.

For any consolidated application that does not include the necessary certifications or assurances, the State Department of Education shall initiate an investigation to determine whether the consolidated application and Single Plan for Pupil Achievement were developed in accordance with law and with the involvement of applicable advisory committees and schoolsite councils.

(b) Onsite school and district compliance reviews of categorical programs shall continue, and school plans shall be required and reviewed as part of these onsite visits and compliance reviews. The Superintendent of Public Instruction shall establish, the process, and frequency for conducting reviews of district achievement and compliance with state and federal categorical program requirements. In addition, the Superintendent of Public Instruction shall establish the content of these instruments, including any criteria for differentiating these reviews based on the achievement of pupils, as demonstrated by the Academic Performance Index developed pursuant to Section 52052, and evidence of district compliance with state and federal law. The State Board of Education shall review the content of these instruments for consistency with State Board of Education policy.

(c) A school district shall submit school plans whenever the State Department of Education requires the plans in order to effectively administer any categorical program subject to this part. The State Department of Education may require submission of the school plan for any school that is the specific subject of a complaint involving any categorical program or service subject to this part.

The State Department of Education may require a school district to submit other data or information as may be necessary for the department to effectively administer any categorical program subject to this part.

(d) Notwithstanding any other provision of law, as a condition of receiving state funding for a categorical program pursuant to Section 64000, and in lieu of the information submission requirements that were

previously required by this section prior to the amendments that added this subdivision and subdivisions (e) to (i), inclusive, school districts shall ensure that each school in a district that operates any categorical programs subject to this part consolidates any plans that are required by those programs into a single plan. Schools may consolidate any plans that are required by federal programs subject to this part into this plan, unless otherwise prohibited to federal law. That plan shall be known as the Single Plan for Pupil Achievement or may be referred to as the Single Plan for Student Achievement.

(e) Plans developed pursuant to subdivision (d) of Section 52054, and Section 6314 and following of Title 20 of the United States Code, shall satisfy this requirement.

(f) Notwithstanding any other provision of law, the content of a Single Plan for Pupil Achievement shall be aligned with school goals for improving pupil achievement. School goals shall be based upon an analysis of verifiable state data, including the Academic Performance Index developed pursuant to Section 52052 and the English Language Development test developed pursuant to Section 60810, and may include any data voluntarily developed by districts to measure pupil achievement. The Single Plan for Pupil Achievement shall, at a minimum, address how funds provided to the school through any of the sources identified in Section 64000 will be used to improve the academic performance of all pupils to the level of the performance goals, as established by the Academic Performance Index developed pursuant to Section 52052. The plan shall also identify the schools' means of evaluating progress toward accomplishing those goals and how state and federal law governing these programs will be implemented.

(g) The plan required by this section shall be reviewed annually and updated, including proposed expenditure of funds allocated to the school through the consolidated application, by the schoolsite council, or, if the school does not have a schoolsite council, by schoolwide advisory groups or school support groups that conform to the requirements of Section 52012. The plans shall be reviewed and approved by the governing board of the local education agency at a regularly scheduled meeting whenever there are material changes that affect the academic programs for students covered by programs identified in Section 64000.

(h) The school plan and subsequent revisions shall be reviewed and approved by the governing board of the school district. School district governing boards shall certify that, to the extent allowable under federal law, plans developed for purposes of this section are consistent with district local improvement plans that are required as a condition of receiving federal funding.

(i) Nothing in this act may be construed to prevent a school district, at its discretion, from conducting an independent review pursuant to subdivision (c) of Section 64001 as that section read on January 1, 2001.

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## CHAPTER 725

An act to amend Section 32001 of, to add Article 7.5 (commencing with Section 17074.50) to Chapter 12.5 of Part 10 of, and to repeal Sections 32000, 32002, 32003, and 32004 of, the Education Code, relating to school facilities.

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

(1) Presently, schools rely solely on school staff or on pupils to detect a fire, activate the fire alarm, evacuate the school buildings, and notify the fire department, all in a timely manner. Many of the school buildings in use in this state are 20 to 30 years old or older and do not provide sufficient fire protection in the building construction, nor do these schools have an adequate fire detection system, alarm system, or automatic fire sprinkler system.

(2) Without an early detection system comprised of smoke and heat detectors that can immediately and automatically detect a fire, an automatic warning system that can sound an alarm, and notify the fire department, and a suppression system that can initiate sprinklers to commence fighting the fire, fires, like the one at the Green Oaks Family Academy Elementary School, are silent killers that can move quickly through open attic space above classrooms full of children until the classrooms are suddenly ignited into inescapable infernos.

(3) An early warning system would give protection to pupils and school personnel by giving them immediate warning at the earliest stage of a fire, by letting school staff focus on the immediate evacuation of the school buildings and by letting staff rely on the automatic system to immediately inform the fire department and commence suppression of the fire.

(4) When school buildings are unoccupied, an automatic fire alarm system can notify the fire department and an automatic fire sprinkler system can help contain the fire within the area of origin until firefighters arrive to extinguish the fire.

(5) Moreover, during times of disaster, schools are often utilized as community relocation centers for displaced persons or families. It is essential, therefore, that schools be adequately protected from fire in order to enhance their ability to survive the disaster and be available for use by the community in those times of need.

(b) This act shall be known, and may be cited, as the Green Oaks Family Academy Elementary School Fire Protection Act.

SEC. 2. Article 7.5 (commencing with Section 17074.50) is added to Chapter 12.5 of Part 10 of the Education Code, to read:

Article 7.5. Automatic Fire Detection, Alarm, and Sprinkler Systems

17074.50. (a) On and after July 1, 2002, all new construction projects submitted to the Division of the State Architect pursuant to this chapter, including, but not limited to, hardship applications, that require the approval of the Department of General Services shall include an automatic fire detection, alarm, and sprinkler system as set forth in Section 17074.52 and approved by the State Fire Marshal. These provisions shall entitle the school district to all applicable reductions in code requirements, as provided in the California Building Standards Code (Title 24 of the California Code of Regulations).

(b) On and after July 1, 2002, all modernization projects that have an estimated total cost in excess of two hundred thousand dollars ($200,000) submitted to the Division of the State Architect pursuant to this chapter, including, but not limited to, hardship applications, that require the approval of the Department of General Services shall include an automatic fire detection and alarm system as set forth in Section 17074.52 and approved by the State Fire Marshal. For a modernization project that is to be completed in more than one phase, the school district may defer installation of the system until the final phase of the modernization project. Solely for purposes of this section, ''modernization'' means any modification of a permanent structure or construction of a new building on an existing campus.

(c) The Department of General Services shall administer this section based upon the standards adopted by the State Fire Marshal pursuant to Section 17074.52.

17074.52. (a) For modernization projects, the automatic fire detection and alarm system required pursuant to subdivision (b) of Section 17074.50 shall consist of smoke or heat detectors, or a combination thereof, as determined by the State Fire Marshall, installed in the school building. The alarm, upon activation of an initiating device, shall alert all occupants and shall transmit the alarm signal to an approved supervising station.

(b) For new construction projects, the automatic fire detection, alarm, and sprinkler system required pursuant to subdivision (a) of Section 17074.50, shall in addition to compliance with subdivision (a), include an automatic fire sprinkler system installed in the school building including, but not necessarily limited to, attic spaces.

(c) Notwithstanding Section 17074.50 or subdivisions (a) or (b) of this section, for a stand alone portable building, the system required pursuant to this article shall consist of an automatic fire detection and alarm system. For the purposes of this subdivision a ''stand alone portable building'' means a portable building that is used as a single classroom and that is sited more than 25 feet from any other building, including, but not limited to, any other portable building.

(d) Except as required for automatic fire detectors and waterflow detection devices, manual fire alarm boxes shall not be required throughout the school building.

(e) The entire system shall be installed, tested, and maintained in accordance with the regulations of the State Fire Marshal.

17074.54. (a) A portable building that is sited with the intent that it be at the site for less than three years and is sited upon a temporary foundation in a manner that is designed to permit easy removal, is exempt from Sections 17074.50 and 17074.52 for a period of three years from the date of siting.

(b) After the three-year exemption set forth in subdivision (a), a school district may request an extension of the exemption for an additional period not to exceed three additional years. The board shall grant the request if the school district presents convincing evidence demonstrating to the satisfaction of the board that the extension is necessary.

(c) For purposes of this section, '' portable building'' means a classroom building of modular design and construction that meets all of the following criteria:

(1) It is designed and constructed to be relocatable and transportable over public streets.

(2) It is designed and constructed for relocation without detaching the roof or the floor from the building.

(3) It has a floor area of 2,000 square feet or less when measured at the most exterior walls.

17074.56. (a) The State Allocation Board shall adjust the per-pupil grant amount set forth in Section 17072.10 as necessary to accommodate 50 percent of the increased costs due to the automatic fire detection, alarm, and sprinkler system required pursuant to subdivision (a) of Section 17074.50. The board shall adjust the per-pupil grant amount set forth in Section 17074.10 as necessary to accommodate 80 percent of the increased costs due to the automatic fire detection and alarm system

required pursuant to subdivision (b) of Section 17074.50. The board shall establish a method to provide up to 100 percent of the increased costs of the automatic fire detection, alarm, and sprinkler, if applicable, systems for school districts which qualify for hardship assistance pursuant to paragraph (1) of subdivision (b) of Section 17075.10.

(b) By July 1, 2003, the board shall review the adequacy of the per-pupil grant adjustments made pursuant to subdivision (a) and shall increase or decrease those adjustments as determined to be necessary.

(c) Any project submitted to the Division of the State Architect on or after September 1, 2001, that includes a qualifying fire detection, alarm, and sprinkler, if applicable, system, and that has not been fully funded prior to July 1, 2002, shall be eligible for grant or eligibility adjustments as set forth in this article.

SEC. 3. Section 32000 of the Education Code is repealed.

SEC. 4. Section 32001 of the Education Code is amended to read:

32001. Every public, private, or parochial school building having an occupant capacity of 50 or more pupils or students or more than one classroom shall be provided with a dependable and operative fire alarm system. Every person and public officer managing, controlling, or in charge of any public, private, or parochial school shall cause the fire alarm signal to be sounded upon the discovery of fire, unless the school is equipped with an automatic fire detection, and alarm system, which may include, but for the purposes of this section is not required to include, a sprinkler system, as described in Section 17074.52. Every person and public officer managing, controlling, or in charge of any public, private, or parochial school, other than a two-year community college, shall cause the fire alarm signal to be sounded not less than once every calendar month and shall conduct a fire drill at least once every calendar month at the elementary level and at least four times every school year at the intermediate levels.

A fire drill shall be held at the secondary level not less than twice every school year.

SEC. 5. Section 32002 of the Education Code is repealed.

SEC. 6. Section 32003 of the Education Code is repealed.

SEC. 7. Section 32004 of the Education Code is repealed.

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## CHAPTER 726

An act relating to the California State University, making an appropriation therefor, 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. (a) Notwithstanding any other provision of law, the Trustees of the California State University may exchange a parcel of land of approximately five acres, known as Zelzah Court, which is part of the California State University, Northridge property, and is bounded by Zelzah Avenue on the east, for the approximately 8.5-acre Prairie Street schoolsite, which is owned by the Los Angeles Unified School District, and bounded by Zelzah Avenue, Prairie Street, Bertrand Avenue, and Dearborn Street in Northridge, California.

(b) Any exchange of properties carried out pursuant to subdivision (a) shall be for no less than fair market value for Zelzah Court, as determined by an independent appraisal. Compensation for Zelzah Court 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.

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## CHAPTER 727

An act to amend Sections 10089.70, 10089.71, 10089.72, 10089.73, 10089.74, 10089.75, 10089.77, 10089.78, 10089.79, 10089.82,

10089.83, 10089.84, 12921.1, and 12921.3 of, and to add Sections 10089.3, 12921.9, and 12926.2 to, the Insurance Code, relating to insurance.

[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 10089.3 is added to the Insurance Code, to read:

10089.3. (a) The department shall adopt regulations setting forth standards governing the training of insurance adjusters in evaluating damage caused by earthquakes. For purposes of this section, the California Earthquake Authority shall make available to the Department of Insurance the standards used by the authority in order for the department to develop regulations that are consistent with the authority's standards. On or before December 31, 2004, insurers shall train and accredit adjusters in accordance with these standards. Thereafter, an insurer using one or more adjusters who are not trained and accredited in accordance with those standards shall submit the names of those adjusters to the department, along with the claim number of the claim adjusted by that adjuster. An adjuster trained and accredited by one insurer pursuant to this section shall not be required to receive training and accreditation again in order to adjust claims for a different insurer. An insurer using an adjuster who has been trained and accredited by another insurer pursuant to this section shall not be required to submit the name of that adjuster to the department.

(b) For purposes of this section, ''insurance adjuster'' shall include the following persons:

(1) Persons licensed pursuant to Chapter 1 (commencing with Section 14000) of Division 5.

(2) Employees of persons licensed pursuant to Chapter 1 (commencing with Section 14000) of Division 5 who perform insurance adjusting activities as defined in Section 14021.

(3) Employees of an insurer who perform insurance adjusting activities as defined in Section 14021.

SEC. 2. Section 10089.70 of the Insurance Code is amended to read:

10089.70. The department shall establish a program for the mediation of the disputes between insured complainants and insurers arising out of the Northridge earthquake of 1994 or any subsequent earthquake, and disputes arising under automobile collision coverage or automobile physical damage coverage, in a policy as defined in Section 660. The program, with respect to the mediation of earthquake insurance claims, shall only apply to personal lines of insurance related to

residential coverage. The goal of the program shall be to favorably resolve a statistically significant number of disputes sent to mediation under the program. This chapter does not apply to any dispute that turns on a question of major insurance coverage or a purely legal interpretation, or disputes involving the actions of an agent or broker in which the insurer is not alleged to have been responsible for the conduct, or any complaint the commissioner finds to be frivolous, or any dispute in which a party is alleged to have committed fraud.

SEC. 3. Section 10089.71 of the Insurance Code is amended to read:

10089.71. Any insured having a dispute with an insurer under a policy that qualifies for this program may file a written complaint with the department. The complaint shall indicate that the complainant has not been able to reach a satisfactory settlement of a claim with the insurer. The department shall, if deemed appropriate, notify the insurer against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the insurer in order to attempt resolution of the dispute.

SEC. 4. Section 10089.72 of the Insurance Code is amended to read:

10089.72. (a) If, after the department's intervention, the insurer and the insured do not reach agreement, the department may notify the insurer that in order to avoid referral to mediation, the insurer shall have 28 calendar days to resolve the dispute, unless the department, for good cause, extends the period by an additional 7 calendar days.

(b) The department may not refer a claim to mediation unless the amount claimed by the insured exceeds seven thousand five hundred dollars ($7,500) and the amount in dispute exceeds two thousand dollars ($2,000).

SEC. 5. Section 10089.73 of the Insurance Code is amended to read:

10089.73. If the dispute is not resolved within the time period prescribed by Section 10089.72, the insurer shall notify the department of the failure, and may include the reason for the failure. The insurer shall, within the time period prescribed by Section 10089.72, notify the department of its position if it believes that the dispute is not eligible for the mediation program.

SEC. 6. Section 10089.74 of the Insurance Code is amended to read:

10089.74. (a) If the insurer notifies the department of the failure to resolve the dispute, the department shall notify the insured of the insured's ability to request mediation and ask the insured whether the insured requests mediation. If the insured responds affirmatively, the department shall refer the dispute to mediation.

(b) If the insurer fails to give the required notice to the department prior to the expiration of the time limits set forth in Section 10089.72, the department shall notify the insured of the insured's ability to request

mediation and ask the insured whether the insured requests mediation. If the insured responds affirmatively, the department shall refer the dispute to mediation. The department may not refer a dispute to mediation if the matter turns upon any of the reasons or conditions set forth in Section 10089.70, relative to applicability, or if for other good cause the commissioner determines that mediation of the dispute is inappropriate.

(c) If the insured has filed a civil complaint, the insurer is excused from mediating under this chapter any claims or disputes involved in the civil action.

SEC. 7. Section 10089.75 of the Insurance Code is amended to read:

10089.75. (a) Any insurer may inform an insured who has filed a complaint with the department concerning a dispute that qualifies for this program of the existence of the mediation program and may ask the insured to seek mediation under this chapter jointly with the insurer. Any insurer may notify the department of any dispute arising out of a qualifying event that it believes may be appropriately resolved through the mediation program. The department, with respect to that notification, shall proceed as provided in subdivision (a) of Section 10089.74.

(b) Notwithstanding Section 10089.82, if the commissioner makes a finding that an individual insurer has engaged in unreasonable or arbitrary refusals to mediate, the commissioner shall have the authority to require that insurer to participate in mediation in all cases deemed by the commissioner appropriate for mediation under this chapter.

(c) Any insurer who has been ordered to participate in mediation on a mandatory basis may seek a review of the order by filing in a court of competent jurisdiction within 30 calendar days of the order. The commissioner's order to participate in mediation, however, may not be stayed during the pendency of any judicial proceeding for any period beyond 60 calendar days after the initial date of the order to participate. The basis for the commissioner's decision to require an insurer to participate in the mediation program shall not be made public unless review is sought. The commissioner's decision not to require an insurer to participate, including the basis for the decision, shall be made public.

(d) Any insured whose request to mediate his or her claim under this chapter was declined by an insurer may request the commissioner to require the insurer to participate in the mediation program and may seek review in a court of competent jurisdiction of the commissioner's decision not to require the insurer to participate in the mediation program. The review shall be required to be sought within 30 calendar days after the commissioner's decision.

SEC. 8. Section 10089.77 of the Insurance Code is amended to read:

10089.77. The department shall contract with a diverse pool of mediators for the provision of mediation services. The contractors shall be qualified mediators who meet standards established by the commissioner. The commissioner shall establish standards in consultation with consumer groups, policyholder groups, mediators, alternative dispute resolution groups, insurers, and the State Bar. These standards shall include:

(a) Mandatory training that may be provided by the department, which shall include, at a minimum, the legal rules for insurance policy interpretation and the rights of insureds under California law, and methods of determining costs of construction and reconstruction and costs of automobile repair in given geographical areas.

(b) A requirement that no mediator participating in this program may have business, familial, contractual, or other affiliation with, or financial interest in, the insured, or in any insurer, insurance agent, or agency. For purposes of this subdivision, an investment in a mutual fund that holds insurer stocks is not a financial interest. Financial interest does not include prior representation of, or an employment or contractual relationship with a law firm or lawyer who represents, one or more insurers or who represents insurance agents in connection with their business affairs, provided the law firm or lawyer has not previously represented any of the parties to the mediation.

However, any prior representation, employment, or contractual relationship shall be disclosed to the parties to the mediation. If any party objects to the mediator because of the prior representation, employment, or contractual relationship, the department shall dismiss that mediator and select a new mediator. An objection under this subdivision does not limit a party's right to object once under subdivision (d).

(c) A requirement that no mediator participating in this program may be either a lawyer or an employee of a lawyer or law firm that has represented any party to the mediation in the previous 36 months, or a person who has a business, familial, contractual, or other affiliation with a lawyer or law firm that has represented any party to the mediation in a lawsuit against the insurer in the last 36 months.

(d) Each party to the mediation may object once to the mediator assigned by the department. If a party objects to the mediator, the department shall dismiss the mediator and assign another mediator.

SEC. 9. Section 10089.78 of the Insurance Code is amended to read:

10089.78. Upon receipt of a complaint, the mediation service, to the extent possible, shall issue a notice to the insured and the insurer setting a date and time within 21 calendar days of the date of the notice for commencement of a mediation conference. The mediator shall make all reasonable efforts to schedule the mediation at a time agreeable to both parties. The notice shall inform the parties that the cost of mediation will

be borne by the insurer, except to the extent provided in Section 10089.81. The notice shall also state that in the event of a proposed settlement the insured may have three business days in which to rescind the agreement, as specified in subdivision (c) of Section 10089.82.

SEC. 10. Section 10089.79 of the Insurance Code is amended to read:

10089.79. (a) The costs of mediation shall be reasonable, and shall be borne by the insurer, except as provided in Section 10089.81. The commissioner may set a fee not to exceed seven hundred dollars ($700) for each dispute mediated.

(b) The administrative expenses for the mediation program shall be paid from existing resources available to the department. If additional resources are required by the department, those resources shall be made available by an annual appropriation in the Budget Act.

SEC. 11. Section 10089.82 of the Insurance Code is amended to read:

10089.82. (a) An insured may not be required to use the department's mediation process. An insurer may not be required to use the department's mediation process, except as provided in Section 10089.75.

(b) Neither the insurer nor the insured is required to accept an agreement proposed during the mediation.

(c) If the parties agree to a settlement agreement, the insured will have three business days to rescind the agreement. Notwithstanding Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, if the insured rescinds the agreement, it may not be admitted in evidence or disclosed unless the insured and all other parties to the agreement expressly agree to its disclosure. If the agreement is not rescinded by the insured, it is binding on the insured and the insurer, and acts as a release of all specific claims for damages known at the time of the mediation presented and agreed upon in the mediation conference. If counsel for the insured is present at the mediation conference and a settlement is agreed upon that is signed by the insured's counsel, the agreement is immediately binding on the insured and may not be rescinded.

(d) This section does not affect rights under existing law for claims for damage that were undetected at the time of the settlement conference.

(e) All settlements reached as a result of department-referred mediation shall address only those issues raised for the purpose of resolution. Settlements and any accompanying releases are not effective to settle or resolve any claim not addressed by the mediator for the purpose of resolution, nor any claim that the insured may have related to the insurer's conduct in handling the claim.

Referral to mediation or the pendency of a mediation under this article is not a basis to prevent or stay the filing of civil litigation arising in

whole or in part out of the same facts. Any applicable statute of limitations is tolled for the number of days beginning from the notification date to the insurer pursuant to Section 10089.72, until the date on which the mediation is either completed or declined, or the date on which the insured fails to appear for a scheduled mediation for the second time, or, in the event that a settlement is completed, the expiration of any applicable three business day cooling off period.

SEC. 12. Section 10089.83 of the Insurance Code is amended to read:

10089.83. (a) On or before August 1 of each year in which this program is in effect, the commissioner shall issue a report on the status of the program in the prior year, including statistics about the number of cases suitable for mediation, the number sent to mediation, and the number accepted, as well as declined, by the insurers, and other similar information concerning the operation of the program.

(b) At six-month intervals, the department shall collect from the mediators with which it contracts for this service the following information: the number of persons to whom mediation was offered, the number of insurers that accepted and declined mediation, the number of settlements, and of those settlements, the number rejected within the three business day cooling off period. For each settlement, the mediation service shall also report the amount initially claimed by the consumer and the amount agreed to be paid, if any, by the insurer or other party.

(c) The department may adopt regulations, including reporting requirements, in the commissioner's discretion, to implement this chapter. The regulations shall be adopted as emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of the regulations is deemed necessary for the immediate preservation of the public peace, health or safety, or general welfare.

SEC. 13. Section 10089.84 of the Insurance Code is amended to read:

10089.84. This chapter shall remain in effect until January 1, 2006, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date. Any case referred to mediation by the department prior to January 1, 2006, shall be mediated under this chapter whether or not the mediation has been completed prior to January 1, 2006. No later than October 1, 2004, the commissioner shall report to the Governor and the Legislature on whether the program should be extended, expanded, terminated, or otherwise modified and shall include specific findings regarding the use of the program by insureds and insurers.

SEC. 14. Section 12921.1 of the Insurance Code is amended to read:

12921.1. (a) The commissioner shall establish a program on or before July 1, 1991, to investigate complaints and respond to inquiries received pursuant to Section 12921.3, to comply with Section 12921.4, and, when warranted, to bring enforcement actions against insurers. The program shall include, but not be limited to, the following:

(1) A toll-free number published in telephone books throughout the state, dedicated to the handling of complaints and inquiries.

(2) Public service announcements to inform consumers of the toll-free telephone number and how to register a complaint or make an inquiry to the department.

(3) A simple, standardized complaint form designed to assure that complaints will be properly registered and tracked.

(4) Retention of records on complaints for at least three years after the complaint has been closed.

(5) Guidelines to disseminate complaint and enforcement information on individual insurers to the public, that shall include, but not be limited to, the following:

(A) License status.

(B) Number and type of complaints closed within the last full calendar year, with analogous statistics from the prior two years for comparison. The proportion of those complaints determined by the department to require that corrective action be taken against the insurer, or leading to insurer compromise, or other remedy for the complainant, as compared to those that are found to be without merit. This information shall be disseminated in a fashion that will facilitate identification of meritless complaints and discourage their consideration by consumers and others interested in the records of insurers.

(C) Number and type of violations found, by reference to the line of insurance and the law violated.

(D) Number and type of enforcement actions taken.

(E) Ratio of complaints received to total policies in force, or premium dollars paid in a given line, or both. Private passenger automobile insurance ratios shall be calculated as the number of complaints received to total car years earned in the period studied.

(F) Any other information the department deems is appropriate public information regarding the complaint record of the insurer that will assist the public in selecting an insurer. However, nothing in this section shall be construed to permit disclosure of information or documents in the possession of the department to the extent that the information and those documents are protected from disclosure under any other provision of law.

(6) Procedures and average processing times for each step of complaint mediation, investigation, and enforcement. These procedures shall be consistent with those in Article 6.5 (commencing with Section

790) of Chapter 1 of Part 2 of Division 1 for complaints within the purview of that article, consistent with those in Article 7 (commencing with Section 1858) of Chapter 9 of Part 2 of Division 1 for complaints within the purview of that article, and consistent with any other provisions of law requiring certain procedures to be followed by the department in investigating or prosecuting complaints against insurers.

(7) A list of criteria to determine which violations should be pursued through enforcement action, and enforcement guidelines that set forth appropriate penalties for violations based on the nature, severity, and frequency of the violations.

(8) Referral of complaints not within the department's jurisdiction to appropriate public and private agencies.

(9) Complaint handling goals that can be tested against surveys carried out pursuant to subdivision (a) of Section 12921.4.

(10) Inclusion in its annual report to the Governor, required by Section 12922, detailed information regarding the program required by this section, that shall include, but not be limited to: a description of the operation of the complaint handling process, listing civil, criminal, and administrative actions taken pursuant to complaints received; the percentage of the department's personnel years devoted to the handling and resolution of complaints; and suggestions for legislation to improve the complaint handling apparatus and to increase the amount of enforcement action undertaken by the department pursuant to complaints if further enforcement is deemed necessary to insure proper compliance by insurers with the law.

(b) The commissioner shall promulgate a regulation that sets forth the criteria that the department shall apply to determine if a complaint is deemed to be justified prior to the public release of a complaint against a specifically named insurer.

(c) The commissioner shall provide to the insurer a description of any complaint against the insurer that the commissioner has received and has deemed to be justified at least 30 days prior to public release of a report summarizing the information required by this section. This description shall include all of the following:

(1) The name of the complainant.

(2) The date the complaint was filed.

(3) A succinct description of the facts of the complaint.

(4) A statement of the department's rationale for determining that the complaint was justified that applies the department's criteria to the facts of the complaint.

(d) An insurer shall provide to the department the name, mailing address, telephone number, and facsimile number of a person whom the insurer designates as the recipient of all notices, correspondence, and other contacts from the department concerning complaints described in

this section. The insurer may change the designation at any time by providing written notice to the Consumer Services Division of the department.

(e) For the purposes of this section, notices, correspondence, and other contacts with the designated person shall be deemed contact with the insurer.

SEC. 15. Section 12921.3 of the Insurance Code is amended to read:

12921.3. (a) The commissioner, in person or through employees of the department, shall receive complaints and inquiries, investigate complaints, prosecute insurers when appropriate and according to guidelines determined pursuant to Section 12921.1, and respond to complaints and inquiries by members of the public concerning the handling of insurance claims, including, but not limited to, violations of Article 10 (commencing with Section 1861) of Chapter 9 of Part 2 of Division 1, by insurers, or alleged misconduct by insurers or production agencies.

(b) The commissioner shall not decline to investigate complaints for any of the following reasons:

(1) The insured is represented by an attorney in a dispute with an insurer, or is in mediation or arbitration.

(2) The insured has a civil action against an insurer.

(3) The complaint is from an attorney, if the complaint is based upon evidence or reasonable beliefs about violations of law known to an attorney because of a civil action.

(4) The commissioner may defer the investigation until the finality of a dispute, mediation, arbitration, or civil action involving the claim is known.

(c) The commissioner, as he or she deems appropriate, and pursuant to Section 12921.1, shall provide for the education of, and dissemination of information to, members of the general public or licensees of the department concerning insurance matters.

SEC. 16. Section 12921.9 is added to the Insurance Code, to read:

12921.9. (a) A letter or legal opinion signed by the Commissioner or the Chief Counsel of the Department of Insurance that was prepared in response to an inquiry from an insured or other person or entity and that discusses either generally or in connection with a specific fact situation the application of the Insurance Code or regulations promulgated by the commissioner shall be made public. The department may redact the name, address, policy number, and other identifying information regarding a particular insured or other person or entity from the letter or legal opinion when it is made public.

(b) A letter or legal opinion made public pursuant to this section shall not be construed as establishing an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, rule, or

regulation, as those terms are described in Sections 11340.5 and 11342.600 of the Government Code.

SEC. 17. Section 12926.2 is added to the Insurance Code, to read:

12926.2. (a) As used in this section, ''extraordinary circumstances'' means circumstances outside of the control of a licensee that severely and materially affect the licensee's ability to conduct normal business operations.

(b) In determining noncompliance with this code and regulations adopted pursuant to this code, and appropriate penalties, if any, the commissioner may consider evidence concerning the existence of extraordinary circumstances.

(c) A settlement agreement between the commissioner and an insurer may not contain a provision referencing the existence of extraordinary circumstances relative to the subject matter at issue, unless the agreement specifies the precise period of time during which extraordinary circumstances were in existence. Except as provided in subdivision (d), extraordinary circumstances may not be stated to exist for a duration of more than six months.

(d) A settlement agreement may concede the existence of extraordinary circumstances for a period of time exceeding six months if all of the following conditions are met:

(1) The commissioner makes a finding in the agreement that extraordinary circumstances existed for more than six months, and documents in that finding facts supporting that conclusion.

(2) The finding identifies the public purpose justifying the extension of extraordinary circumstances beyond the six-month period.

(3) The beginning and ending date, by month and year, of the commencement and termination of the extraordinary circumstances are identified.

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## CHAPTER 728

An act to amend Sections 125.3, 125.9, 650, 802, 803, 803.2, 1646.9, 1647.12, 1716.1, 1743, 1744, 2065, 2066, 2072, 2073, 2079, 2102, 2245, 2499.5, 2531, 2532.6, 2570.3, 2903, 2914, 4008, 4033, 4053, 4110, 4115, 4160, 4161, 4196, 4200.5, 4301, 4305.5, 4331, 4400, 4980.40, 4980.44, 4980.50, 4986.20, 4986.21, 4986.47, 4992.1, 4992.3, 4996.2, 4996.18, 4996.21, 4999.2, 4999.7, 7006, 7026, 7027.3, 7028.7, 7028.13, 7059.1, 7071.11, 7074, 7091, 7112, 7153, 17910.5, 17913, 17917, 17923, 22251, 22254, 22355, and 22453.1 of, to amend and repeal Section 1646.7 of, to add Sections 1621, 4052.7, 4996.23, 5536.26, and 7112.1 to, to repeal Sections 2088 and 4992.6 of, to repeal

Article 1.5 (commencing with Section 1621) of Chapter 4 of Division 2 of, and to repeal and add Sections 2878.7 and 4524 of, the Business and Professions Code, and to amend Sections 109948.1, 111656, 111656.2, and 111656.4 of the Health and Safety Code, relating to businesses, and making an appropriation therefor.

[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 125.3 of the Business and Professions Code is amended to read:

125.3. (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board or the board created by the Chiropractic Initiative Act, the board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

SEC. 1.2. Section 125.9 of the Business and Professions Code is amended to read:

125.9. (a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain 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) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed two thousand five hundred dollars ($2,500) for each inspection or each investigation made with respect to the violation, or two thousand five hundred dollars ($2,500) for each violation or count if the violation involves fraudulent billing submitted

to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission 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 of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, if 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 disclosure.

(e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.

SEC. 1.4. Section 650 of the Business and Professions Code is amended to read:

650. Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or coownership in

or with any person to whom these patients, clients, or customers are referred is unlawful.

The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary interest or coownership in the laboratory, pharmacy, clinic, or health care facility; provided, however, that the licensee's return on investment for that proprietary interest or coownership shall be based upon the amount of the capital investment or proportional ownership of the licensee which ownership interest is not based on the number or value of any patients referred. Any referral excepted under this section shall be unlawful if the prosecutor proves that there was no valid medical need for the referral.

''Health care facility'' means a general acute care hospital, acute psychiatric hospital, skilled nursing facility, intermediate care facility, and any other health facility licensed by the State Department of Health Services under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison or by imprisonment in the state prison and a fine of fifty thousand dollars ($50,000).

SEC. 1.5. Section 802 of the Business and Professions Code is amended to read:

802. (a) Every settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services, by a person who holds a license, certificate or other similar authority from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200) or Chapter 5 (commencing with Section 2000) of Division 2) or the Osteopathic Initiative Act who does not possess professional liability insurance as to that claim shall,

within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if the person is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in the compliance is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(b) Every settlement over thirty thousand dollars ($30,000), or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or the unauthorized rendering of professional services, by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2, or the Osteopathic Initiative Act, who does not possess professional liability insurance as to the claim shall, within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency that issued the license, certificate or similar authority. A complete report including the name and license number of the physician and surgeon shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if the claimant is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make the complete report. Failure of the physician or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply

with this section, or to hinder or impede any other person in the compliance is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

(c) Every settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by negligence, error, or omission in practice, or the unauthorized rendering of professional services, by a marriage, family, and child counselor or clinical social worker licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990), who does not possess professional liability insurance as to that claim shall within 30 days after the written settlement agreement has been reduced to writing and signed by all the parties thereto or 30 days after service of the arbitration award on the parties, be reported to the agency that issued the license, certificate, or similar authority. A complete report shall be made by appropriate means by the person or his or her counsel, with a copy of the communication to be sent to the claimant through his or her counsel if he or she is so represented, or directly if he or she is not. If, within 45 days of the conclusion of the written settlement agreement or service of the arbitration award on the parties, counsel for the claimant (or if he or she is not represented by counsel, the claimant himself or herself) has not received a copy of the report, he or she shall himself or herself make a complete report. Failure of the marriage, family, and child counselor or clinical social worker or claimant (or, if represented by counsel, their counsel) to comply with this section is a public offense punishable by a fine of not less than fifty dollars ($50) or more than five hundred dollars ($500). Knowing and intentional failure to comply with this section, or conspiracy or collusion not to comply with this section, or to hinder or impede any other person in that compliance is a public offense punishable by a fine of not less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000).

SEC. 2. Section 803 of the Business and Professions Code is amended to read:

803. (a) (1) Except as provided in paragraph (2), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from the Board of Behavioral Science Examiners or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200)) has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars ($30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered

the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(2) For purposes of a physician and surgeon who has committed a crime, or is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) shall send a complete report including the name and license number of the physician and surgeon to the Medical Board of California as to any judgment of a claim for damages for death or personal injury caused by that licensee's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 calendar days after entry of judgment.

(c) Notwithstanding any other provision of law, the Medical Board of California and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information received pursuant to subdivision (a) regarding felony convictions of, and judgments against, a physician and surgeon or doctor of podiatric medicine. The Division of Medical Quality and the California Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may, by regulation, establish categories of information that need not be disclosed to the public because that information is unreliable or not sufficiently related to the licensee's professional practice.

SEC. 3. Section 803.2 of the Business and Professions Code is amended to read:

803.2. Every entry of settlement agreement over thirty thousand dollars ($30,000), or judgment or arbitration award of any amount, of a claim or action for damages for death or personal injury caused by, or alleging, the negligence, error, or omission in practice, or the unauthorized rendering of professional services, by a physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act, when that judgment, settlement agreement, or arbitration award is entered against, or paid by, the employer of that licensee and not the licensee himself or herself, shall be reported to the appropriate board by the entity required to report the information in accordance with Sections 801, 801.1, 802, and 803 as an entry of judgment, settlement, or arbitration award against the negligent licensee. This report shall include the name and license number of the physician and surgeon.

''Employer'' as used in this section means a professional corporation, a group practice, a health care facility or clinic licensed or exempt from licensure under the Health and Safety Code, a licensed health care service plan, a medical care foundation, an educational institution, a professional institution, a professional school or college, a general law corporation, a public entity, or a nonprofit organization that employs, retains, or contracts with a licensee referred to in this section. Nothing in this section shall be construed to authorize the employment of, or contracting with, any licensee in violation of Section 2400.

SEC. 4. Article 1.5 (commencing with Section 1621) of Chapter 4 of Division 2 of the Business and Professions Code is repealed.

SEC. 5. Section 1621 is added to the Business and Professions Code, to read:

1621. The board shall utilize in the administration of its licensure examinations only examiners whom it has appointed and who meet the following criteria:

(a) Possession of a valid license to practice dentistry in this state or possession of a valid license in one of the following dental auxiliary categories: registered dental assistant, registered dental assistant in extended functions, registered dental hygienist, registered dental hygienist in extended functions, or registered dental hygienist in alternative practice.

(b) Practice as a licensed dentist or in a dental auxiliary licensure category for at least five years preceding his or her appointment.

(c) Hold no position as an officer or faculty member at any college, school, or institution that provides dental instruction in the same licensure category as that held by the examiner.

SEC. 6. Section 1646.7 of the Business and Professions Code, as amended by Section 1 of Chapter 177 of the Statutes of 1999, is amended to read:

1646.7. (a) A violation of this article constitutes unprofessional conduct and is grounds for the revocation or suspension of the dentist's permit, license, or both, or the dentist may be reprimanded or placed on probation.

(b) A violation of any provision of this article or Section 1682 is grounds for suspension or revocation of the physician's and surgeon's permit issued pursuant to this article by the Dental Board of California. The exclusive enforcement authority against a physician and surgeon by the Dental Board of California shall be to suspend or revoke the permit issued pursuant to this article. The Dental Board of California shall refer a violation of this article by a physician and surgeon to the Medical Board of California for its consideration as unprofessional conduct and further action, if deemed necessary by the Medical Board of California, pursuant to Chapter 5 (commencing with Section 2000). A suspension

or revocation of a physician and surgeon's permit by the Dental Board of California pursuant to this article shall not constitute a disciplinary proceeding or action for any purpose except to permit the initiation of an investigation or disciplinary action by the Medical Board of California as authorized by Section 2220.5.

(c) The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the Dental Board of California shall have all the powers granted therein.

SEC. 7. Section 1646.7 of the Business and Professions Code, as amended by Section 2 of Chapter 177 of the Statutes of 1999, is repealed.

SEC. 8. Section 1646.9 of the Business and Professions Code is amended to read:

1646.9. (a) Notwithstanding any other provision of law, including, but not limited to, Section 1646.1, a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) may administer general anesthesia in the office of a licensed dentist for dental patients, without regard to whether the dentist possesses a permit issued pursuant to this article, if all of the following conditions are met:

(1) The physician and surgeon possesses a current license in good standing to practice medicine in this state.

(2) The physician and surgeon holds a valid general anesthesia permit issued by the Dental Board of California pursuant to subdivision (b).

(b) (1) A physician and surgeon who desires to administer general anesthesia as set forth in subdivision (a) shall apply to the Dental Board of California on an application form prescribed by the board and shall submit all of the following:

(A) The payment of an application fee prescribed by this article.

(B) Evidence satisfactory to the Medical Board of California showing that the applicant has successfully completed a postgraduate residency training program in anesthesiology that is recognized by the American Council on Graduate Medical Education, as set forth in Section 2079.

(C) Documentation demonstrating that all equipment and drugs required by the Dental Board of California are possessed by the applicant and shall be available for use in any dental office in which he or she administers general anesthesia.

(D) Information relative to the current membership of the applicant on hospital medical staffs.

(2) Prior to issuance or renewal of a permit pursuant to this section, the Dental Board of California may, at its discretion, require an onsite inspection and evaluation of the facility, equipment, personnel, including, but not limited to, the physician and surgeon, and procedures utilized. At least one of the persons evaluating the procedures utilized by the physician and surgeon shall be a licensed physician and surgeon

expert in outpatient general anesthesia who has been authorized or retained under contract by the Dental Board of California for this purpose.

(3) The permit of any physician and surgeon who has failed an onsite inspection and evaluation shall be automatically suspended 30 days after the date on which the board notifies the physician and surgeon of the failure unless within that time period the physician and surgeon has retaken and passed an onsite inspection and evaluation. Every physician and surgeon issued a permit under this article shall have an onsite inspection and evaluation at least once every six years. Refusal to submit to an inspection shall result in automatic denial or revocation of the permit.

(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 on or before January 1, 2007, deletes or extends that date.

SEC. 9. Section 1647.12 of the Business and Professions Code is amended to read:

1647.12. A dentist who desires to administer, or order the administration of, oral conscious sedation for minor patients, who does not hold a general anesthesia permit as provided in Sections 1646.1 and 1646.2 or a conscious sedation permit as provided in Sections 1647.2 and 1647.3, shall register his or her name with the board on a board-prescribed registration form. The dentist shall submit the registration fee and evidence showing that he or she satisfies any of the following requirements:

(a) Satisfactory completion of a postgraduate program in oral and maxillofacial surgery, pediatric dentistry, or periodontics at a dental school approved by either the Commission on Dental Accreditation or a comparable organization approved by the board.

(b) Satisfactory completion of a general practice residency or other advanced education in a general dentistry program approved by the board.

(c) Satisfactory completion of a board-approved educational program on oral medications and sedation.

SEC. 10. Section 1716.1 of the Business and Professions Code is amended to read:

1716.1. (a) Notwithstanding Section 1716, the board may, by regulation, reduce the renewal fee for a licensee who has practiced dentistry for 20 years or more in this state, has reached the age of retirement under the federal Social Security Act (42 U.S.C. Sec. 301 et seq.), and customarily provides his or her services free of charge to any person, organization, or agency. In the event that charges are made, these charges shall be nominal. In no event shall the aggregate of these charges in any single calendar year be in an amount that would render the licensee

ineligible for full social security benefits. The board shall not reduce the renewal fee under this section to an amount less than one-half of the regular renewal fee.

(b) Notwithstanding Section 1716, any licensee who demonstrates to the satisfaction of the board that he or she is unable to practice dentistry due to a disability, may request a waiver of 50 percent of the renewal fee. The granting of a waiver shall be at the discretion of the board, and the board may terminate the waiver at any time. A licensee to whom the board has granted a waiver pursuant to this subdivision shall not engage in the practice of dentistry unless and until the licensee pays the current renewal fee in full and establishes to the satisfaction of the board, on a form prescribed by the board and signed under penalty of perjury, that the licensee's disability either no longer exists or no longer affects his or her ability to safely practice dentistry.

SEC. 11. Section 1743 of the Business and Professions Code is amended to read:

1743. The committee shall consist of the following nine members:

(a) One member who is a public member of the board, one member who is a licensed dentist and who has been appointed by the board as an examiner pursuant to Section 1621, one member who is a licensed dentist who is neither a board member nor appointed by the board as an examiner pursuant to Section 1621, three members who are licensed as registered dental hygienists, at least one of whom is actively employed in a private dental office, and three members who are licensed as registered dental assistants. If available, an individual licensed as a registered dental hygienist in extended functions shall be appointed in place of one of the members licensed as a registered dental hygienist. If available, an individual licensed as a registered dental assistant in extended functions shall be appointed in place of one of the members licensed as a registered dental assistant.

(b) The public member of the board shall not have been licensed under Chapter 4 (commencing with Section 1600) of the Business and Professions Code within five years of the appointment date and shall not have any current financial interest in a dental-related business.

SEC. 12. Section 1744 of the Business and Professions Code is amended to read:

1744. (a) The members of the committee shall be appointed by the Governor. The terms of the member who is a board member and the member who has been appointed by the board as an examiner pursuant to Section 1621 shall expire December 31, 1976. The terms of the member who is a licensed dentist and one member who is a dental assistant and one member who is licensed as a registered dental hygienist shall expire on December 31, 1977. The terms of all other members shall

expire on December 31, 1978. Thereafter, appointments shall be for a term of four years.

(b) No member shall serve as a member of the committee for more than two consecutive terms. Vacancies shall be filled by appointment for the unexpired terms. The committee shall annually elect one of its members as chairperson.

(c) The Governor shall have the power to remove any member of the committee from office for neglect of any duty required by law or for incompetence or unprofessional or dishonorable conduct.

SEC. 13. Section 2065 of the Business and Professions Code is amended to read:

2065. Unless otherwise provided by law, no postgraduate trainee, intern, resident, postdoctoral fellow, or instructor may engage in the practice of medicine, or receive compensation therefor, or offer to engage in the practice of medicine unless he or she holds a valid, unrevoked, and unsuspended physician's and surgeon's certificate issued by the board. However, a graduate of an approved medical school, who is registered with the Division of Licensing and who is enrolled in a postgraduate training program approved by the division, may engage in the practice of medicine whenever and wherever required as a part of the program under the following conditions:

(a) A graduate enrolled in an approved first-year postgraduate training program may so engage in the practice of medicine for a period not to exceed one year whenever and wherever required as a part of the training program, and may receive compensation for that practice.

(b) A graduate who has completed the first year of postgraduate training may, in an approved residency or fellowship, engage in the practice of medicine whenever and wherever required as part of that residency or fellowship, and may receive compensation for that practice. The resident or fellow shall qualify for, take, and pass the next succeeding written examination for licensure given by the division, or shall qualify for and receive a physician's and surgeon's certificate by one of the other methods specified in this chapter. If the resident or fellow fails to receive a license to practice medicine under this chapter within one year from the commencement of the residency or fellowship or if the division denies his or her application for licensure, all privileges and exemptions under this section shall automatically cease.

SEC. 14. Section 2066 of the Business and Professions Code is amended to read:

2066. (a) Nothing in this chapter shall be construed to prohibit a foreign medical graduate from engaging in the practice of medicine whenever and wherever required as a part of a clinical service program under the following conditions:

(1) The clinical service is in a postgraduate training program approved by the Division of Licensing.

(2) The graduate is registered with the division for the clinical service.

(b) A graduate may engage in the practice of medicine under this section until the receipt of his or her physician and surgeon's certificate. If the graduate fails to pass the examination and receive a certificate by the completion of the graduate's third year of postgraduate training or if the division denies his or her application for licensure, all privileges and exemptions under this section shall automatically cease.

(c) Nothing in this section shall preclude a foreign medical graduate from engaging in the practice of medicine under any other exemption contained in this chapter.

SEC. 15. Section 2072 of the Business and Professions Code is amended to read:

2072. Notwithstanding any other provision of law and subject to the provisions of the State Civil Service Act, any person who is licensed to practice medicine in any other state, who meets the requirements for application set forth in this chapter and who registers with and is approved by the Division of Licensing, may be appointed to the medical staff within a state institution and, under the supervision of a physician and surgeon licensed in this state, may engage in the practice of medicine on persons under the jurisdiction of any state institution. Qualified physicians and surgeons licensed in this state shall not be recruited pursuant to this section.

No person appointed pursuant to this section shall be employed in any state institution for a period in excess of two years from the date the person was first employed, and the appointment shall not be extended beyond the two-year period. At the end of the two-year period, the physician shall have been issued a physician's and surgeon's certificate by the board in order to continue employment. Until the physician has obtained a physician's and surgeon's certificate from the board, he or she shall not engage in the practice of medicine in this state except to the extent expressly permitted herein.

SEC. 16. Section 2073 of the Business and Professions Code is amended to read:

2073. Notwithstanding any other provision of law, any person who is licensed to practice medicine in any other state who meets the requirements for application set forth in this chapter, and who registers with and is approved by the Division of Licensing, may be employed on the resident medical staff within a county general hospital and, under the supervision of a physician and surgeon licensed in this state, may engage in the practice of medicine on persons within the county institution. Employment pursuant to this section is authorized only when an

adequate number of qualified resident physicians cannot be recruited from intern staffs in this state.

No person appointed pursuant to this section shall be employed in any county general hospital for a period in excess of two years from the date the person was first employed, and the employment shall not be extended beyond the two-year period. At the end of the two-year period, the physician shall have been issued a physician's and surgeon's certificate by the board in order to continue as a member of the resident staff. Until the physician has obtained a physician's and surgeon's certificate from the board, he or she shall not engage in the practice of medicine in this state except to the extent expressly permitted herein.

SEC. 17. Section 2079 of the Business and Professions Code is amended to read:

2079. (a) A physician and surgeon who desires to administer general anesthesia in the office of a dentist pursuant to Section 1646.9, shall provide the Medical Board of California with a copy of the application submitted to the Dental Board of California pursuant to subdivision (b) of Section 1646.9 and a fee established by the board not to exceed the costs of processing the application as provided in this section.

(b) The Medical Board of California shall review the information submitted and take action as follows:

(1) Inform the Dental Board of California whether the physician and surgeon has a current license in good standing to practice medicine in this state.

(2) Verify whether the applicant has successfully completed a postgraduate residency training program in anesthesiology and whether the program has been recognized by the American Council on Graduate Medical Education.

(3) Inform the Dental Board of California whether the Medical Board of California has determined that the applicant has successfully completed the postgraduate residency training program in anesthesiology recognized by the American Council on Graduate Medicine.

(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 on or before January 1, 2007, deletes or extends that date.

SEC. 18. Section 2088 of the Business and Professions Code is repealed.

SEC. 19. Section 2102 of the Business and Professions Code is amended to read:

2102. Any applicant whose professional instruction was acquired in a country other than the United States or Canada shall provide evidence

satisfactory to the division of compliance with the following requirements to be issued a physician's and surgeon's certificate:

(a) Completion in a medical school or schools of a resident course of professional instruction equivalent to that required by Section 2089 and issuance to the applicant of a document acceptable to the division that shows final and successful completion of the course. However, nothing in this section shall be construed to require the division to evaluate for equivalency any coursework obtained at a medical school disapproved by the division pursuant to this section.

(b) Certification by the Educational Commission for Foreign Medical Graduates, or its equivalent, as determined by the division. This subdivision shall apply to all applicants who are subject to this section and who have not taken and passed the written examination specified in subdivision (d) prior to June 1, 1986.

(c) Satisfactory completion of the postgraduate training required under Section 2096. An applicant shall be required to have substantially completed the professional instruction required in subdivision (a) and shall be required to make application to the division and have passed steps 1 and 2 of the written examination relating to biomedical and clinical sciences prior to commencing any postgraduate training in this state. In its discretion, the division may authorize an applicant who is deficient in any education or clinical instruction required by Sections 2089 and 2089.5 to make up any deficiencies as a part of his or her postgraduate training program, but that remedial training shall be in addition to the postgraduate training required for licensure.

(d) Pass the written examination as provided under Article 9 (commencing with Section 2170). If an applicant has not satisfactorily completed at least two years of approved postgraduate training, the applicant shall also pass the clinical competency written examination. An applicant shall be required to meet the requirements specified in subdivision (b) prior to being admitted to the written examination required by this subdivision.

Nothing in this section prohibits the division from disapproving any foreign medical school or from denying an application if, in the opinion of the division, the professional instruction provided by the medical school or the instruction received by the applicant is not equivalent to that required in Article 4 (commencing with Section 2080).

SEC. 20. Section 2245 of the Business and Professions Code is amended to read:

2245. A violation of Article 2.7 (commencing with Section 1646) of Chapter 4 or Section 1682 by a physician and surgeon who possesses a permit issued by the Dental Board of California to administer general anesthesia in a dental office may constitute unprofessional conduct.

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 on or before January 1, 2007, deletes or extends that date.

SEC. 21. Section 2499.5 of the Business and Professions Code is amended to read:

2499.5. The following fees apply to certificates to practice podiatric medicine. The amount of fees prescribed for doctors of podiatric medicine shall be those set forth in this section unless a lower fee is established by the board in accordance with Section 2499.6. Fees collected pursuant to this section shall be fixed by the board in amounts not to exceed the actual costs of providing the service for which the fee is collected.

(a) Each applicant for a certificate to practice podiatric medicine shall pay an application fee of twenty dollars ($20) at the time the application is filed. If the applicant qualifies for a certificate, he or she shall pay a fee which shall be fixed by the board at an amount not to exceed one hundred dollars ($100) nor less than five dollars ($5) for the issuance of the certificate.

(b) The oral examination fee shall be seven hundred dollars ($700), or the actual cost, whichever is lower, and shall be paid by each applicant. If the applicant's credentials are insufficient or if the applicant does not desire to take the examination, and has so notified the board 30 days prior to the examination date, only the examination fee is returnable to the applicant. The board may charge an examination fee for any subsequent reexamination of the applicant.

(c) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required by this section, shall pay an initial license fee. The initial license fee shall be eight hundred dollars ($800). The initial license shall expire the second year after its issuance on the last day of the month of birth of the licensee. The board may reduce the initial license fee by up to 50 percent of the amount of the fee for any applicant who is enrolled in a postgraduate training program approved by the board or who has completed a postgraduate training program approved by the board within six months prior to the payment of the initial license fee.

(d) The biennial renewal fee shall be nine hundred dollars ($900). This fee shall remain in effect only until January 1, 2004, and as of that date is reduced to eight hundred dollars ($800), unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date. Any licensee enrolled in an approved residency program shall be required to pay only 50 percent of the biennial renewal fee at the time of his or her first renewal.

(e) The delinquency fee is one hundred fifty dollars ($150).

(f) The duplicate wall certificate fee is forty dollars ($40).

(g) The duplicate renewal receipt fee is forty dollars ($40).

(h) The endorsement fee is thirty dollars ($30).

(i) The letter of good standing fee or for loan deferment is thirty dollars ($30).

(j) There shall be a fee of sixty dollars ($60) for the issuance of a limited license under Section 2475.

(k) The application fee for certification under Section 2472 shall be fifty dollars ($50). The examination and reexamination fee for this certification shall be seven hundred dollars ($700).

(*l*) The filing fee to appeal the failure of an oral examination shall be twenty-five dollars ($25).

(m) The fee for approval of a continuing education course or program shall be one hundred dollars ($100).

SEC. 22. Section 2531 of the Business and Professions Code is amended to read:

2531. There is hereby created a Speech-Language Pathology and Audiology Board under the jurisdiction of the Medical Board of California. The Speech-Language Pathology and Audiology Board shall consist of nine members, three of whom shall be public members. The Speech-Language Pathology and Audiology Board shall enforce and administer this chapter.

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 inoperative and repeal dates.

SEC. 22.5. Section 2532.6 of the Business and Professions Code is amended to read:

2532.6. (a) The Legislature recognizes that the education and experience requirements of this chapter constitute only minimal requirements to assure the public of professional competence. The Legislature encourages all professionals licensed and registered by the board under this chapter to regularly engage in continuing professional development and learning that is related and relevant to the professions of speech-language pathology and audiology.

(b) On and after January 1, 2001, and until January 1, 2002, the board shall not renew any license or registration pursuant to this chapter unless the applicant certifies to the board that he or she has completed, after April 12, 1999, and prior to his or her renewal date in 2001, not less than the minimum number of continuing professional development hours established by the board pursuant to subdivision (c) for the professional practice authorized by his or her license. On and after January 1, 2002, the board shall not renew any license or registration pursuant to this chapter unless the applicant certifies to the board that he or she has completed in the preceding two years not less than the minimum number

of continuing professional development hours established by the board pursuant to subdivision (c) for the professional practice authorized by his or her license or registration.

(c) (1) The board shall prescribe the forms utilized for and the number of hours of required continuing professional development for persons licensed or registered under this chapter.

(2) The board shall have the right to audit the records of any applicant to verify the completion of the continuing professional development requirements.

(3) Applicants shall maintain records of completion of required continuing professional development coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(d) The board shall establish exceptions from the continuing professional development requirements of this section for good cause as defined by the board.

(e) (1) The continuing professional development services shall be obtained from accredited institutions of higher learning, organizations approved as continuing education providers by either the American Speech-Language Hearing Association or the American Academy of Audiology, the California Medical Association's Institute for Medical Quality Continuing Medical Education Program, or other entities or organizations approved as continuing professional development providers by the board, in its discretion.

(2) The continuing professional development services offered by these entities may, but are not required to, utilize pretesting and posttesting or other evaluation techniques to measure and demonstrate improved professional learning and competency.

(3) An accredited institution of higher learning, an organization approved as continuing education providers by either the American Speech-Language Hearing Association or the American Academy of Audiology, and the California Medical Association's Institute for Medical Quality Continuing Education Program shall be exempt from any application or registration fees that the board may charge for continuing education providers.

(4) Unless a course offered by entities listed in paragraph (3) meets the requirements of the sponsoring institution, the course may not be credited towards the continuing professional development requirements for license renewal.

(5) The licensee shall be responsible for obtaining the required course completion documents for courses offered by entities specified in paragraph (1).

(f) The board, by regulation, shall fund the administration of this section through professional development services provider and

licensing fees to be deposited in the Speech-Language Pathology and Audiology Board Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section.

(g) The continuing professional development requirements adopted by the board shall comply with any guidelines for mandatory continuing education established by the Department of Consumer Affairs.

SEC. 22.7. Section 2570.3 of the Business and Professions Code is amended to read:

2570.3. (a) No person shall practice occupational therapy or hold himself or herself out as an occupational therapist or as being able to practice occupational therapy, or to render occupational therapy services in this state unless he or she is licensed as an occupational therapist under the provisions of this chapter. No person shall hold himself or herself out as an occupational therapy assistant or work as an occupational therapy assistant under the supervision of an occupational therapist unless he or she is certified as an occupational therapy assistant under the provisions of this chapter.

(b) Only an individual may be licensed or certified under this chapter.

(c) Nothing in this chapter shall be construed as authorizing an occupational therapist to practice physical therapy, as defined in Section 2620; speech-language pathology or audiology, as defined in Section 2530.2; nursing, as defined Section 2725; psychology, as defined in Section 2903; or spinal manipulation or other forms of healing, except as authorized by this section.

(d) An occupational therapist may provide feeding or swallowing assessment, evaluation, or intervention if the therapist has demonstrated to the satisfaction of the board that he or she has met educational training, and competency requirements that the board shall develop in collaboration with the Speech-Language Pathology and Audiology Board.

(e) Nothing in this chapter shall be construed as authorizing an occupational therapist to seek reimbursement for services other than for the practice of occupational therapy as defined in this chapter.

(f) ''Supervision of an occupational therapy assistant'' means that the responsible occupational therapist shall at all times be responsible for all occupational therapy services provided to the client. The occupational therapist who is responsible for appropriate supervision shall formulate and document in each client's record, with his or her signature, the goals and plan for that client, and shall make sure that the occupational therapy assistant assigned to that client functions under appropriate supervision. As part of the responsible occupational therapist's appropriate supervision, he or she shall conduct at least weekly review and

inspection of all aspects of occupational therapy services by the occupational therapy assistant.

(1) The supervising occupational therapist has the continuing responsibility to follow the progress of each patient, provide direct care to the patient, and to assure that the occupational therapy assistant does not function autonomously.

(2) An occupational therapist shall not supervise more occupational therapy assistants, at any one time, than can be appropriately supervised in the opinion of the board. Two occupational therapy assistants shall be the maximum number of occupational therapy assistants supervised by an occupational therapist at any one time, but the board may permit the supervision of a greater number by an occupational therapist if, in the opinion of the board, there would be adequate supervision and the public's health and safety would be served. In no case shall the total number of occupational therapy assistants exceed twice the number of occupational therapists regularly employed by a facility at any one time.

(g) On and after January 1, 2005, any occupational therapist providing hand therapy services shall be certified by the Hand Therapy Certification Commission and shall maintain this certification in order to continue to provide hand therapy services.

(1) Techniques used by hand therapists to augment occupational therapy treatment are physical agent modalities and massage.

(2) On and after January 1, 2003, occupational therapists who are seeking certification by the Hand Therapy Certification Commission, and who have duly notified the board in writing of their intent to seek that certification, may provide hand therapy services under the supervision of an occupational therapist or physical therapist certified by the Hand Therapy Certification Commission in order to complete the experience requirements for certification.

(3) The board shall promulgate rules and regulations specifically pertaining to the practice of hand therapy by a person licensed under this chapter.

(h) In developing the rules and regulations required under this section, the board shall collaborate with the Physical Therapy Board of California and the Board of Registered Nursing.

SEC. 23. Section 2878.7 of the Business and Professions Code is repealed.

SEC. 24. Section 2878.7 is added to the Business and Professions Code, to read:

2878.7. (a) A person whose license has been revoked, suspended, surrendered, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the disciplinary

order or if any portion of the order is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Except as otherwise provided in this section, at least three years for the reinstatement of a license that was revoked or surrendered, except that the board may, in its sole discretion, specify in its order a lesser period of time, which shall be no less than one year, to petition for reinstatement.

(2) At least two years for the early termination of a probation period of three years or more.

(3) At least one year for the early termination of a probation period of less than three years.

(4) At least one year for the modification of a condition of probation, or for the reinstatement of a license revoked for mental or physical illness.

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The board itself or the administrative law judge, if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision.

(d) The board may grant or deny the petition or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(e) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(f) Except in those cases where the petitioner has been disciplined for a violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter the provisions of Sections 822 and 823.

SEC. 24.2. Section 2903 of the Business and Professions Code is amended to read:

2903. No person may engage in the practice of psychology, or represent himself or herself to be a psychologist, without a license granted under this chapter, except as otherwise provided in this chapter. The practice of psychology is defined as rendering or offering to render for a fee to individuals, groups, organizations or the public any psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivations.

The application of these principles and methods includes, but is not restricted to: diagnosis, prevention, treatment, and amelioration of psychological problems and emotional and mental disorders of individuals and groups.

Psychotherapy within the meaning of this chapter means the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually, or socially ineffectual or maladjustive.

As used in this chapter, ''fee'' means any charge, monetary or otherwise, whether paid directly or paid on a prepaid or capitation basis by a third party, or a charge assessed by a facility, for services rendered.

SEC. 24.4. Section 2914 of the Business and Professions Code is amended to read:

2914. Each applicant for licensure shall comply with all of the following requirements:

(a) Is not subject to denial of licensure under Division 1.5.

(b) Possess an earned doctorate degree (1) in psychology, (2) in education psychology, or (3) in education with the field of specialization in counseling psychology or educational psychology. Except as provided in subdivision (g), this degree or training shall be obtained from an accredited university, college, or professional school.

No educational institution shall be denied recognition as an accredited academic institution solely because its program is not accredited by any professional organization of psychologists, and nothing in this chapter or in the administration of this chapter shall require the registration with the board by educational institutions of their departments of psychology or their doctoral programs in psychology.

An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the

board that he or she possesses a doctorate degree in psychology that is equivalent to a degree earned from a regionally accredited university in the United States or Canada. These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and any other documentation the board deems necessary.

(c) Have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations, or under suitable alternative supervision as determined by the board in regulations duly adopted under this chapter, at least one year of which shall be after being awarded the doctorate in psychology. If the supervising licensed psychologist fails to provide verification to the board of the experience required by this subdivision within 30 days after being so requested by the applicant, the applicant may provide written verification directly to the board.

If the applicant sends verification directly to the board, the applicant shall file with the board a declaration of proof of service, under penalty of perjury, of the request for verification. A copy of the completed verification forms shall be provided to the supervising psychologist and the applicant shall prove to the board that a copy has been sent to the supervising psychologist by filing a declaration of proof of service under penalty of perjury, and shall file this declaration with the board when the verification forms are submitted.

Upon receipt by the board of the applicant's verification and declarations, a rebuttable presumption affecting the burden of producing evidence is created that the supervised, professional experience requirements of this subdivision have been satisfied. The supervising psychologist shall have 20 days from the day the board receives the verification and declaration to file a rebuttal with the board.

The authority provided by this subdivision for an applicant to file written verification directly shall apply only to an applicant who has acquired the experience required by this subdivision in the United States.

The board shall establish qualifications by regulation for supervising psychologists and shall review and approve applicants for this position on a case-by-case basis.

(d) Take and pass the examination required by Section 2941 unless otherwise exempted by the board under this chapter.

(e) Show by evidence satisfactory to the board that he or she has completed training in the detection and treatment of alcohol and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after September 1, 1985.

(f) Show by evidence satisfactory to the board that he or she has completed 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. This requirement applies to applicants who begin graduate training on or after January 1, 1995. This 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.

(g) An applicant holding a doctoral degree in psychology from an approved institution is deemed to meet the requirements of this section if all of the following are true:

(1) The approved institution offered a doctoral degree in psychology designed to prepare students for a license to practice psychology and was approved by the Bureau for Private Postsecondary and Vocational Education on or before July 1, 1999.

(2) The approved institution has not, since July 1, 1999, had a new location, as described in Section 94721 of the Education Code.

(3) The approved institution is not a franchise institution, as defined in Section 94729.3 of the Education Code.

SEC. 25. Section 4008 of the Business and Professions Code is amended to read:

4008. (a) Except as provided by Section 159.5, the board may employ inspectors of pharmacy. The inspectors, whether the inspectors are employed by the board or the department's Division of Investigation, may inspect during business hours all pharmacies, wholesalers, dispensaries, stores, or places in which drugs or devices are compounded, prepared, furnished, dispensed, or stored. Any board inspector of pharmacy whose principal duties include either (1) the inspection and investigation of pharmacies or pharmacists for alleged violations of this act, or (2) the supervision of other inspectors of pharmacy, shall be a pharmacist. For purposes of inspecting or investigating nonpharmacies or nonpharmacists pursuant to this chapter, a board inspector of pharmacy is not required to be a pharmacist.

(b) Notwithstanding subdivision (a), a pharmacy inspector may inspect or examine a physician's office or clinic that does not have a permit under Section 4180 or 4190 only to the extent necessary to determine compliance with and to enforce either Section 4080 or 4081.

(c) (1) Any pharmacy inspector employed by the board or in the department's Division of Investigation shall have the authority, as a public officer, to arrest, without warrant, any person whenever the officer

has reasonable cause to believe that the person to be arrested has, in his or her presence, violated any provision of this chapter or of Division 10 (commencing with Section 11000) of the Health and Safety Code. If the violation is a felony, or if the arresting officer has reasonable cause to believe that the person to be arrested has violated any provision that is declared to be a felony, although no felony has in fact been committed, he or she may make an arrest although the violation or suspected violation did not occur in his or her presence.

(2) In any case in which an arrest authorized by this subdivision is made for an offense declared to be a misdemeanor, and the person arrested does not demand to be taken before a magistrate, the arresting inspector may, instead of taking the person before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. That chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

(d) There shall be no civil liability on the part of, and no cause of action shall arise against, any person, acting pursuant to subdivision (a) and within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest that is lawful, or that the arresting officer, at the time of the arrest, had reasonable cause to believe was lawful. No inspector shall be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

(e) Any inspector may serve all processes and notices throughout the state.

SEC. 26. Section 4033 of the Business and Professions Code is amended to read:

4033. (a) ''Manufacturer'' means and includes every person who prepares, derives, produces, compounds, or repackages any drug or device except a pharmacy that manufactures on the immediate premises where the drug or device is sold to the ultimate consumer.

(b) Notwithstanding subdivision (a), ''manufacturer'' shall not mean a pharmacy compounding a drug for parenteral therapy, pursuant to a prescription, for delivery to another pharmacy for the purpose of delivering or administering the drug to the patient or patients named in the prescription, provided that neither the components for the drug nor the drug are compounded, fabricated, packaged, or otherwise prepared prior to receipt of the prescription.

(c) Notwithstanding subdivision (a), ''manufacturer'' shall not mean a pharmacy that, at a patient's request, repackages a drug previously dispensed to the patient, or to the patient's agent, pursuant to a prescription.

SEC. 27. Section 4052.7 is added to the Business and Professions Code, to read:

4052.7. (a) A pharmacy may, at a patient's request, repackage a drug previously dispensed to the patient or to the patient's agent pursuant to a prescription.

(b) Any pharmacy providing repackaging services shall have in place policies and procedures for repackaging these drugs and shall label the repackaged prescription container with the following:

(1) All the information required by Section 4076.

(2) The name and address of the pharmacy repackaging the drug and the name and address of the pharmacy that initially dispensed the drug to the patient.

(c) The repackaging pharmacy and the pharmacy that initially dispensed the drug shall only be liable for its own actions in providing the drug to the patient or the patient's agent.

SEC. 27.2. Section 4053 of the Business and Professions Code is amended to read:

4053. (a) Subdivision (a) of Section 4051 shall not apply to a manufacturer, veterinary food-animal drug retailer, or wholesaler if the board shall find that sufficient, qualified supervision is employed by the manufacturer, veterinary food-animal drug retailer, or wholesaler to adequately safeguard and protect the public health, nor shall Section 4051 apply to any laboratory licensed under Section 351 of Title III of the Public Health Service Act (Public Law 78-410).

(b) An individual employed by a manufacturer, veterinary food-animal drug retailer, or wholesaler may apply for an exemption from Section 4051. In order to obtain and maintain that exemption, the individual shall meet the following requirements:

(1) He or she shall be a high school graduate or possess a general education development equivalent.

(2) He or she shall have a minimum of one year of paid work experience related to the distribution or dispensing of dangerous drugs or dangerous devices or meet all of the prerequisites to take the examination required for licensure as a pharmacist by the board.

(3) He or she shall complete a training program approved by the board that, at a minimum, addresses each of the following subjects:

(A) Knowledge and understanding of state and federal law relating to the distribution of dangerous drugs and dangerous devices.

(B) Knowledge and understanding of state and federal law relating to the distribution of controlled substances.

(C) Knowledge and understanding of quality control systems.

(D) Knowledge and understanding of the United States Pharmacopoeia standards relating to the safe storage and handling of drugs.

(E) Knowledge and understanding of prescription terminology, abbreviations, dosages and format.

(4) The board may, by regulation, require training programs to include additional material.

(5) The board may, by regulation, require training programs to include additional material.

(6) The board shall not issue a certificate of exemption until the applicant provides proof of completion of the required training to the board.

(c) The manufacturer, veterinary food-animal drug retailer, or wholesaler shall not operate without a pharmacist or an individual in possession of a certificate of exemption on its premises.

(d) Only a pharmacist or an individual in possession of a certificate of exemption shall prepare and affix the label to veterinary food-animal drugs.

SEC. 28. Section 4110 of the Business and Professions Code is amended to read:

4110. (a) No person shall conduct a pharmacy in the State of California unless he or she has obtained a license from the board. A license shall be required for each pharmacy owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a pharmacy in more than one location. The license shall be renewed annually. The board may, by regulation, determine the circumstances under which a license may be transferred.

(b) The board may, at its discretion, issue a temporary permit, when the ownership of a pharmacy is transferred from one person to another, upon the conditions and for any periods of time as the board determines to be in the public interest. A temporary permit fee shall be established by the board at an amount not to exceed the annual fee for renewal of a permit to conduct a pharmacy. A temporary permit may be issued for a period not to exceed 180 days, and may be issued subject to terms and conditions the board deems necessary. If the board determines a temporary permit was issued by mistake or denies the application for a permanent license or registration, the temporary license or registration shall terminate upon either personal service of the notice of termination upon the permitholder or service by certified mail, return receipt requested, at the permitholder's address of record with the board, whichever comes first. Neither for purposes of retaining a temporary permit nor for purposes of any disciplinary of license denial proceeding before the board shall the temporary permitholder be deemed to have a vested property right or interest in the permit.

SEC. 29. Section 4115 of the Business and Professions Code is amended to read:

4115. (a) Notwithstanding any other provision of law, a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.

(b) This section does not authorize the performance of any tasks specified in subdivision (a) by a pharmacy technician without a pharmacist on duty, nor does this section authorize the use of a pharmacy technician to perform tasks specified in subdivision (a) except under the direct supervision and control of a pharmacist.

(c) This section does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist.

(d) The board shall adopt regulations to specify tasks pursuant to subdivision (a) that a pharmacy technician may perform under the direct supervision and control of a pharmacist. Any pharmacy that employs a pharmacy technician to perform tasks specified in subdivision (a) shall do so in conformity with the regulations adopted by the board pursuant to this subdivision.

(e) (1) No person shall act as a pharmacy technician without first being registered with the board as a pharmacy technician as set forth in Section 4202.

(2) The registration requirements in paragraph (1) and Section 4202 shall not apply during the first year of employment for a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, or for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

(f) The performance of duties by a pharmacy technician shall be under the direct supervision and control of a pharmacist. The pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician. A pharmacy technician may perform the duties, as specified in subdivision (a), only under the immediate, personal supervision and control of a pharmacist. Any pharmacist responsible for a pharmacy technician shall be on the premises at all times, and the pharmacy technician shall be within the pharmacist's view. A pharmacist shall indicate verification of the prescription by initialing the prescription label before the medication is provided to the patient.

This subdivision shall not apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility. Notwithstanding the exemption in this subdivision, the requirements of subdivisions (a) and (b) shall apply to a person employed or utilized as

a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility.

(g) (1) The ratio of pharmacy technicians performing the tasks specified in subdivision (a) to pharmacists shall not exceed one to one, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117. This ratio is applicable to all practice settings, except for an inpatient of a licensed health facility, a patient of a licensed home health agency, as specified in paragraph (2), an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, and for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

(2) The board may adopt regulations establishing the ratio of pharmacy technicians performing the tasks specified in subdivision (a) to pharmacists applicable to the filling of prescriptions of an inpatient of a licensed health facility and for a patient of a licensed home health agency. Any ratio established by the board pursuant to this subdivision shall allow, at a minimum, at least one pharmacy technician for each pharmacist, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117.

(h) Notwithstanding subdivisions (b) and (f), the board shall by regulation establish conditions to permit the temporary absence of a pharmacist for breaks and lunch periods pursuant to Section 512 of the Labor Code and the orders of the Industrial Welfare Commission without closing the pharmacy. During these temporary absences, a pharmacy technician may, at the discretion of the pharmacist, remain in the pharmacy but may only perform nondiscretionary tasks. The pharmacist shall be responsible for a pharmacy technician and shall review any task performed by a pharmacy technician during the pharmacist's temporary absence. Nothing in this subdivision shall be construed to authorize a pharmacist to supervise pharmacy technicians in greater ratios than those described in subdivision (g).

SEC. 29.2. Section 4115 of the Business and Professions Code is amended to read:

4115. (a) Notwithstanding any other provision of law, a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.

(b) This section does not authorize the performance of any tasks specified in subdivision (a) by a pharmacy technician without a pharmacist on duty, nor does this section authorize the use of a pharmacy technician to perform tasks specified in subdivision (a) except under the direct supervision and control of a pharmacist.

(c) This section does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist.

(d) The board shall adopt regulations to specify tasks pursuant to subdivision (a) that a pharmacy technician may perform under the direct supervision and control of a pharmacist. Any pharmacy that employs a pharmacy technician to perform tasks specified in subdivision (a) shall do so in conformity with the regulations adopted by the board pursuant to this subdivision.

(e) (1) No person shall act as a pharmacy technician without first being registered with the board as a pharmacy technician as set forth in Section 4202.

(2) The registration requirements in paragraph (1) and Section 4202 shall not apply during the first year of employment for a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, or for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

(f) The performance of duties by a pharmacy technician shall be under the direct supervision and control of a pharmacist. The pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician. A pharmacy technician may perform the duties, as specified in subdivision (a), only under the immediate, personal supervision and control of a pharmacist. Any pharmacist responsible for a pharmacy technician shall be on the premises at all times, and the pharmacy technician shall be within the pharmacist's view. A pharmacist shall indicate verification of the prescription by initialing the prescription label before the medication is provided to the patient.

This subdivision shall not apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility. Notwithstanding the exemption in this subdivision, the requirements of subdivisions (a) and (b) shall apply to a person employed or utilized as a pharmacy technician to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility.

(g) (1) A pharmacy with only one pharmacist shall have no more than one pharmacy technician performing the tasks specified in subdivision (a). The ratio of pharmacy technicians performing the tasks specified in subdivision (a) to any additional pharmacist shall not exceed 2:1, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117. This ratio is applicable to all practice settings, except for an inpatient of a licensed health facility, a patient of a licensed home health agency, as specified in paragraph (2),

an inmate of a correctional facility of the Department of the Youth Authority or the Department of Corrections, and for a person receiving treatment in a facility operated by the State Department of Mental Health, the State Department of Developmental Services, or the Department of Veterans Affairs.

(2) The board may adopt regulations establishing the ratio of pharmacy technicians performing the tasks specified in subdivision (a) to pharmacists applicable to the filling of prescriptions of an inpatient of a licensed health facility and for a patient of a licensed home health agency. Any ratio established by the board pursuant to this subdivision shall allow, at a minimum, at least one pharmacy technician for a single pharmacist in a pharmacy and two pharmacy technicians for each additional pharmacist, except that this ratio shall not apply to personnel performing clerical functions pursuant to Section 4116 or 4117.

(3) A pharmacist scheduled to supervise a second pharmacy technician may refuse to supervise a second pharmacy technician if the pharmacist determines, in the exercise of his or her professional judgment, that permitting the second pharmacy technician to be on duty would interfere with the effective performance of the pharmacist's responsibilities under this chapter. A pharmacist assigned to supervise a second pharmacy technician shall notify the pharmacist in charge in writing of his or her determination, specifying the circumstances of concern with respect to the pharmacy or the pharmacy technician that have led to the determination, within a reasonable period, but not to exceed 24 hours, after the posting of the relevant schedule. No entity employing a pharmacist may discharge, discipline, or otherwise discriminate against any pharmacist in the terms and conditions of employment for exercising or attempting to exercise in good faith the right established pursuant to this paragraph.

(h) Notwithstanding subdivisions (b) and (f), the board shall by regulation establish conditions to permit the temporary absence of a pharmacist for breaks and lunch periods pursuant to Section 512 of the Labor Code and the orders of the Industrial Welfare Commission without closing the pharmacy. During these temporary absences, a pharmacy technician may, at the discretion of the pharmacist, remain in the pharmacy but may only perform nondiscretionary tasks. The pharmacist shall be responsible for a pharmacy technician and shall review any task performed by a pharmacy technician during the pharmacist's temporary absence. Nothing in this subdivision shall be construed to authorize a pharmacist to supervise pharmacy technicians in greater ratios than those described in subdivision (g).

SEC. 29.4. Section 4160 of the Business and Professions Code is amended to read:

4160. (a) No person shall act as a wholesaler of any dangerous drug or dangerous device unless he or she has obtained a license from the board. Upon approval by the board and the payment of the required fee, the board shall issue a license to the applicant.

(b) No selling or distribution outlet, located in this state, of any out-of-state manufacturer, that has not obtained a license from the board, that sells or distributes only the dangerous drugs or the dangerous devices of that manufacturer, shall sell or distribute any dangerous drug or dangerous device in this state without obtaining a wholesaler's license from the board.

(c) A separate license shall be required for each place of business owned or operated by a wholesaler. Each license shall be renewed annually and shall not be transferable.

(d) The board shall not issue or renew a wholesaler license until the wholesaler designates an exemptee-in-charge and notifies the board in writing of the identity and license number of that exemptee. The exemptee-in-charge shall be responsible for the wholesaler's compliance with state and federal laws governing wholesalers. Each wholesaler shall designate, and notify the board of, a new exemptee-in-charge within 30 days of the date that the prior exemptee-in-charge ceases to be exemptee-in-charge. A pharmacist may be designated as the exemptee-in-charge.

(e) For purposes of this section, ''exemptee-in-charge'' means a person granted a certificate of exemption pursuant to Section 4053, or a registered pharmacist, who is the supervisor or manager of the facility.

SEC. 30. Section 4161 of the Business and Professions Code is amended to read:

4161. (a) No person shall act as an out-of-state manufacturer or wholesaler of dangerous drugs or dangerous devices doing business in this state who has not obtained an out-of-state dangerous drug or dangerous device distributor's license from the board. Persons not located in this state selling or distributing dangerous drugs or dangerous devices in this state only through a licensed wholesaler are not required to be licensed as an out-of-state manufacturer or wholesaler or have an out-of-state dangerous drug or dangerous device distributor's license.

(b) Applications for an out-of-state dangerous drug or dangerous device distributor's license shall be made on a form furnished by the board. The board may require any information as the board deems is reasonably necessary to carry out the purposes of the section. The license shall be renewed annually.

(c) The Legislature, by enacting this section, does not intend a license issued to any out-of-state manufacturer or wholesaler pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the

Revenue and Taxation Code on any out-of-state manufacturer or wholesaler.

(d) The Legislature, by enacting this section, does not intend a license issued to any out-of-state manufacturer or wholesaler pursuant to this section to serve as any evidence that the out-of-state manufacturer or wholesaler is doing business within this state.

SEC. 30.2. Section 4196 of the Business and Professions Code is amended to read:

4196. (a) No person shall conduct a veterinary food-animal drug retailer in the State of California unless he or she has obtained a license from the board. A license shall be required for each veterinary food-animal drug retailer owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a veterinary food-animal drug retailer in more than one location. The license shall be renewed annually and shall not be transferable.

(b) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be fixed by the board at an amount not to exceed the annual fee for renewal of a license to conduct a veterinary food-animal drug retailer.

(c) No person other than a pharmacist, an intern pharmacist, an exempt person, an authorized officer of the law, or a person authorized to prescribe, shall be permitted in that area, place, or premises described in the permit issued by the board pursuant to Section 4041, wherein veterinary food-animal drugs are stored, possessed, or repacked. A pharmacist or exemptee shall be responsible for any individual who enters the veterinary food-animal drug retailer for the purpose of performing clerical, inventory control, housekeeping, delivery, maintenance, or similar functions relating to the veterinary food-animal drug retailer.

(d) The board shall not issue or renew a veterinary food-animal retailer license until the veterinary food-animal drug retailer designates an exemptee-in-charge and notifies the board in writing of the identity and license number of that exemptee. The exemptee-in-charge shall be responsible for the veterinary food-animal drug retailer's compliance with state and federal laws governing veterinary food-animal drug retailers. Each veterinary food-animal drug retailer shall designate, and notify the board of, a new exemptee-in-charge within 30 days of the date that the prior exemptee-in-charge ceases to be exemptee-in-charge. A pharmacist may be designated as the exemptee-in-charge.

(e) For purposes of this section, ''exemptee-in-charge'' means a person granted a certificate of exemption pursuant to Section 4053, or a registered pharmacist, who is the supervisor or manager of the facility.

SEC. 30.4. Section 4200.5 of the Business and Professions Code is amended to read:

4200.5. (a) The board shall issue, upon application and payment of the fee established by Section 4400, a retired license to a pharmacist who has been licensed by the board. The board shall not issue a retired license to a pharmacist whose license has been revoked.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active pharmacist's license is required. A pharmacist holding a retired license shall be permitted to use the titles ''retired pharmacist'' or ''pharmacist, retired.''

(c) The holder of a retired license shall not be required to renew that license.

(d) In order for the holder of a retired license issued pursuant to this section to restore his or her license to active status, he or she shall pass the examination that is required for initial licensure with the board.

SEC. 30.6. 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 or of Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code relating to the Medi-Cal program. 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. 31. Section 4305.5 of the Business and Professions Code is amended to read:

4305.5. (a) Any person who has obtained a license to conduct a wholesaler or veterinary food-animal drug retailer, shall notify the board within 30 days of the termination of employment of any pharmacist or exemptee who takes charge of, or acts as manager of the licensee. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(b) Any person who has obtained a license to conduct a wholesaler or veterinary food-animal drug retailer, who willfully fails to notify the board of the termination of employment of any pharmacist or exemptee who takes charge of, or acts as manager of the licensee, and who continues to operate the licensee in the absence of a pharmacist or an exemptee approved for that location, shall be subject to summary suspension or revocation of his or her license to conduct a wholesaler or veterinary food-animal drug retailer.

(c) Any pharmacist or exemptee who takes charge of, or acts as manager of a wholesaler or veterinary food-animal drug retailer, who terminates his or her employment at the licensee, shall notify the board within 30 days of the termination of employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

SEC. 32. Section 4331 of the Business and Professions Code is amended to read:

4331. (a) Any person who is neither a pharmacist nor an exemptee and who takes charge of a wholesaler or veterinary food-animal drug retailer or who dispenses a prescription or furnishes dangerous devices except as otherwise provided in this chapter is guilty of a misdemeanor.

(b) Any person who has obtained a license to conduct a veterinary food-animal drug retailer and who fails to place in charge of that veterinary food-animal drug retailer a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the

dispensing of prescriptions, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(c) Any person who has obtained a license to conduct a wholesaler and who fails to place in charge of that wholesaler a pharmacist or exemptee, or any person who, by himself or herself, or by any other person, permits the furnishing of dangerous drugs or dangerous devices, except by a pharmacist or exemptee, or as otherwise provided in this chapter, is guilty of a misdemeanor.

SEC. 33. Section 4400 of the Business and Professions Code is amended to read:

4400. The amount of fees and penalties prescribed by this chapter, except as otherwise provided, is that fixed by the board according to the following schedule:

(a) The fee for a nongovernmental pharmacy license shall be three hundred forty dollars ($340) and may be increased to four hundred dollars ($400).

(b) The fee for a nongovernmental pharmacy or medical device retailer annual renewal shall be one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250).

(c) The fee for the pharmacist examination shall be one hundred fifty-five dollars ($155) and may be increased to one hundred eighty-five dollars ($185).

(d) The fee for regrading an examination shall be seventy-five dollars ($75) and may be increased to eighty-five dollars ($85). If an error in grading is found and the applicant passes the examination, the regrading fee shall be refunded.

(e) The fee for a pharmacist license and biennial renewal shall be one hundred fifteen dollars ($115) and may be increased to one hundred fifty dollars ($150).

(f) The fee for a wholesaler license and annual renewal shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(g) The fee for a hypodermic license and renewal shall be ninety dollars ($90) and may be increased to one hundred twenty-five dollars ($125).

(h) The fee for application and investigation for an exemptee license under Sections 4053 and 4054 shall be seventy-five dollars ($75) and may be increased to one hundred dollars ($100), except for a veterinary food-animal drug retailer exemptee, for whom the fee shall be one hundred dollars ($100).

(i) The fee for an exemptee license and annual renewal under Sections 4053 and 4054 shall be one hundred ten dollars ($110) and may be increased to one hundred fifty dollars ($150), except that the fee for the issuance of a veterinary food-animal drug retailer exemptee license shall

be one hundred fifty dollars ($150), for renewal one hundred ten dollars ($110), which may be increased to one hundred fifty dollars ($150), and for filing a late renewal fifty-five dollars ($55).

(j) The fee for an out-of-state drug distributor's license and annual renewal issued pursuant to Section 4120 shall be five hundred fifty dollars ($550) and may be increased to six hundred dollars ($600).

(k) The fee for registration and annual renewal of providers of continuing education shall be one hundred dollars ($100) and may be increased to one hundred thirty dollars ($130).

(*l*) The fee for evaluation of continuing education courses for accreditation shall be set by the board at an amount not to exceed forty dollars ($40) per course hour.

(m) The fee for evaluation of applications submitted by graduates of foreign colleges of pharmacy or colleges of pharmacy not recognized by the board shall be one hundred sixty-five dollars ($165) and may be increased to one hundred seventy-five dollars ($175).

(n) The fee for an intern license or extension shall be sixty-five dollars ($65) and may be increased to seventy-five dollars ($75). The fee for transfer of intern hours or verification of licensure to another state shall be fixed by the board not to exceed twenty dollars ($20).

(o) The board may, by regulation, provide for the waiver or refund of the additional fee for the issuance of a certificate where the certificate is issued less than 45 days before the next succeeding regular renewal date.

(p) The fee for the reissuance of any license, or renewal thereof, that has been lost or destroyed or reissued due to a name change is thirty dollars ($30).

(q) The fee for the reissuance of any license, or renewal thereof, that must be reissued because of a change in the information, is sixty dollars ($60) and may be increased to one hundred dollars ($100).

(r) It is the intent of the Legislature that, in setting fees pursuant to this section, the board shall seek to maintain a reserve in the Pharmacy Board Contingent Fund equal to approximately one year's operating expenditures.

(s) The fee for any applicant for a clinic permit is three hundred forty dollars ($340) and may be increased to four hundred dollars ($400) for each permit. The annual fee for renewal of the permit is one hundred seventy-five dollars ($175) and may be increased to two hundred fifty dollars ($250) for each permit.

(t) The board shall charge a fee for the processing and issuance of a registration to a pharmacy technician and a separate fee for the biennial renewal of the registration. The registration fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50). The biennial renewal fee shall be twenty-five dollars ($25) and may be increased to fifty dollars ($50).

(u) The fee for a veterinary food-animal drug retailer license shall be four hundred dollars ($400). The annual renewal fee for a veterinary food-animal drug retailer shall be two hundred fifty dollars ($250).

(v) The fee for issuance of a retired license pursuant to Section 4200.5 shall be thirty dollars ($30).

SEC. 34. Section 4524 of the Business and Professions Code is repealed.

SEC. 35. Section 4524 is added to the Business and Professions Code, to read:

4524. (a) A person whose license has been revoked, suspended, surrendered, or placed on probation, may petition the board for reinstatement or modification of the penalty, including modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the disciplinary order or if any portion of the order is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Except as otherwise provided in this section, at least three years for the reinstatement of a license that was revoked or surrendered, except that the board may, in its sole discretion, specify in its order a lesser period of time, which shall be no less than one year to petition for reinstatement.

(2) At least two years for the early termination of a probation period of three years or more.

(3) At least one year for the early termination of a probation period of less than three years.

(4) At least one year for the modification of a condition of probation, or for the reinstatement of a license revoked for mental or physical illness.

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The board itself or the administrative law judge, if one is designated by the board, shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision.

(d) The board may grant or deny the petition or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(e) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the

petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(f) Except in those cases where the petitioner has been disciplined for a violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter the provisions of Sections 822 and 823.

SEC. 36. Section 4980.40 of the Business and Professions Code is amended to read:

4980.40. To qualify for a license, an applicant shall have all the following qualifications:

(a) Applicants applying for licensure on or after January 1, 1988, shall possess a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university accredited by the Western Association of Schools and Colleges, or approved by the Bureau for Private Postsecondary and Vocational Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements regardless of accreditation or approval. For purposes of this chapter, the term ''approved by the Bureau for Private Postsecondary and Vocational Education'' shall mean unconditional approval existing at the time of the applicant's graduation from the school, college, or university. In order to qualify for licensure pursuant to this subdivision, any doctor's or master's degree program shall be a single, integrated program primarily designed to train marriage and family therapists and shall contain no less than 48 semester or 72 quarter units of instruction. The instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment.

The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage, family, and child counseling, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age and their effect upon individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, and geropsychology.

(4) A variety of approaches to the treatment of children.

The board shall, by regulation, set forth the subjects of instruction required in this subdivision.

(b) (1) In addition to the 12 semester or 18 quarter units of coursework specified above, the doctor's or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic techniques, assessment, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage, family, and child counselor.

(2) For applicants who enrolled in a degree program on or after January 1, 1995, the practicum shall include a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.

(3) (A) Supervised practicum hours, as specified in this subdivision, shall be evaluated, accepted, and credited as hours for trainee experience by the board.

(B) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(c) As an alternative to meeting the qualifications specified in subdivision (a), the board shall accept as equivalent degrees, those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(d) All applicants shall, in addition, complete the coursework or training specified in Section 4980.41.

(e) All applicants shall be at least 18 years of age.

(f) All applicants shall have at least two years' experience that meets the requirements of this chapter in interpersonal relationships, marriage, family, and child counseling and psychotherapy under the supervision of a licensed marriage, family, and child counselor, licensed clinical social worker, licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology. Experience shall not be gained under the supervision of an individual who has provided therapeutic services to that applicant. For those

supervisorial relationships in effect on or before December 31, 1988, and which remain in continuous effect thereafter, experience may be gained under the supervision of a licensed physician who has completed a residency in psychiatry. Any person supervising another person pursuant to this subdivision shall have been licensed or certified for at least two years prior to acting as a supervisor, shall have a current and valid license that is not under suspension or probation, and shall meet the requirements established by regulations.

(g) The applicant shall pass a written examination and an oral examination conducted by the board or its designees.

(h) The applicant shall not have committed acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of any crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(i) (1) An applicant applying for intern registration who, prior to December 31, 1987, met the qualifications for registration, but who failed to apply or qualify for intern registration may be granted an intern registration if the applicant meets all of the following criteria:

(A) The applicant possesses a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis in marriage, family, and child counseling, or social work with an emphasis in clinical social work obtained from a school, college, or university currently conferring that degree that, at the time the degree was conferred, was accredited by the Western Association of Schools and Colleges, and where the degree conferred was, at the time it was conferred, specifically intended to satisfy the educational requirements for licensure by the Board of Behavioral Sciences.

(B) The applicant's degree and the course content of the instruction underlying that degree have been evaluated by the chief academic officer of a school, college, or university accredited by the Western Association of Schools and Colleges to determine the extent to which the applicant's degree program satisfies the current educational requirements for licensure, and the chief academic officer certifies to the board the amount and type of instruction needed to meet the current requirements.

(C) The applicant completes a plan of instruction that has been approved by the board at a school, college, or university accredited by the Western Association of Schools and Colleges that the chief academic officer of the educational institution has, pursuant to subparagraph (B), certified will meet the current educational requirements when considered in conjunction with the original degree.

(2) A person applying under this subdivision shall be considered a trainee, as that term is defined in Section 4980.03, once he or she is enrolled to complete the additional coursework necessary to meet the current educational requirements for licensure.

SEC. 37. Section 4980.44 of the Business and Professions Code is amended to read:

4980.44. (a) An unlicensed marriage, family, and child counselor intern employed under this chapter shall:

(1) Have earned at least a master's degree as specified in Section 4980.40.

(2) Be registered with the board prior to the intern performing any duties, except as otherwise provided in subdivision (e) of Section 4980.43.

(3) File for renewal of registration annually for a maximum of five years after initial registration with the board. Renewal of registration shall include filing an application for renewal, paying a renewal fee of seventy-five dollars ($75), and notifying the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, or whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the registrant's last renewal.

(4) Inform each client or patient prior to performing any professional services that he or she is unlicensed and under the supervision of a licensed marriage, family, and child counselor, licensed clinical social worker, licensed psychologist, licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry and who is described in subdivision (f) of Section 4980.40, whichever is applicable. Continued employment as an unlicensed marriage, family, and child counselor intern shall cease after six years unless the requirements of subdivision (b) are met. No registration shall be renewed or reinstated beyond the six years from initial issuance regardless of whether it has been revoked.

(b) When no further renewals are possible, either because the applicant has exhausted the number of renewals available or because of the repeal of Section 4980.44, as amended by Chapter 1114 of the Statutes of 1991, an applicant may apply for and obtain new intern registration status if the applicant meets the educational requirements for registration in effect at the time of the application for a new intern registration. An applicant who is issued a subsequent intern registration pursuant to this subdivision may be employed or volunteer in all allowable work settings except in private practice, and shall fulfill all of the required hours of experience for licensure within that intern

registration period. Hours of experience fulfilled under a prior intern registration shall not be used to satisfy licensure requirements.

SEC. 38. Section 4980.50 of the Business and Professions Code is amended to read:

4980.50. Every applicant who meets the educational and experience requirements and applies for a license as a marriage, family, and child counselor shall be examined by the board. The examinations shall be as set forth in subdivision (g) of Section 4980.40. The examinations shall be given at least twice a year at a time and place and under supervision as the board may determine. The board shall examine the candidate with regard to his or her knowledge and professional skills and his or her judgment in the utilization of appropriate techniques and methods.

The board shall not deny any applicant, who has submitted a complete application for examination, admission to the licensure examinations required by this section if the applicant meets the educational and experience requirements of this chapter, and has not committed any acts or engaged in any conduct which would constitute grounds to deny licensure.

The board shall not deny any applicant, whose application for licensure is complete, admission to the written examination, nor shall the board postpone or delay any applicant's written examination or delay informing the candidate of the results of any written examination, solely upon the receipt by the board of a complaint alleging acts or conduct which would constitute grounds to deny licensure.

If an applicant for examination who has passed the written examination is the subject of a complaint or is under board investigation for acts or conduct that, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take the oral examination for licensure, but may withhold the results of the examination or notify the applicant that licensure will not be granted pending completion of the investigation.

Notwithstanding Section 135, the board may deny any applicant who has previously failed either the written or oral examination permission to retake either examination pending completion of the investigation of any complaints against the applicant. Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has been filed against the applicant pursuant to Sections 11503 and 11504 of the Government Code, respectively, or the applicant has been denied in accordance with subdivision (b) of Section 485.

Notwithstanding any other provision of law, the board may destroy all written and oral examination materials two years following the date of the examination.

On or after January 1, 2002, no applicant shall be eligible to participate in an oral examination if his or her passing score on the written examination occurred more than seven years before.

An applicant who has qualified pursuant to this chapter shall be issued a license as a marriage, family, and child counselor in the form that the board may deem appropriate.

SEC. 39. Section 4986.20 of the Business and Professions Code is amended to read:

4986.20. A person who desires a license under this article shall meet all of the following qualifications:

(a) He or she shall possess at least a master's degree in psychology, educational psychology, school psychology, or counseling and guidance, or a degree deemed equivalent by the board under regulations duly adopted under this article. This degree or training shall be obtained from educational institutions approved by the board according to the regulations duly adopted under this article.

(b) He or she shall be at least 18 years of age.

(c) He or she shall not have committed any acts or crimes constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of any crime in this or any other state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(d) He or she shall have successfully completed 60 semester hours of postgraduate work devoted to pupil personnel services or have experience deemed equivalent by the board in regulations duly adopted under this chapter.

(e) He or she shall furnish proof of three years of full-time experience as a credentialed school psychologist in the public schools or experience which the board deems equivalent. If the applicant provides proof of having completed one year's internship working full time as a school psychologist intern in the public schools in an accredited internship program, one year's experience shall be credited toward this requirement.

(f) He or she shall be examined by the board with respect to the professional functions authorized by this article.

(g) He or she shall have at least one year of supervised professional experience in an accredited school psychology program, or under the direction of a licensed psychologist, or a suitable alternative experience as determined by the board in regulations duly adopted under this chapter.

SEC. 40. Section 4986.21 of the Business and Professions Code is amended to read:

4986.21. (a) Only individuals who have the qualifications prescribed by the board under this chapter are eligible to take the examination. Every applicant who is issued a license as an educational psychologist shall be examined by the board.

(b) Notwithstanding any other provision of law, the board may destroy all written and oral examination materials two years following the date of the examination.

On or after January 1, 2002, no applicant shall be eligible to participate in an oral examination if his or her passing score on the written examination occurred more than seven years before.

SEC. 41. Section 4986.47 of the Business and Professions Code is amended to read:

4986.47. A licensee shall give written notice to the board of a name change within 30 days after each change, providing both the old and new names. A copy of the legal document affecting the name change, such as a court order or marriage certificate, shall be submitted with the notice.

SEC. 42. Section 4992.1 of the Business and Professions Code is amended to read:

4992.1. (a) Only individuals who have the qualifications prescribed by the board under this chapter are eligible to take the examination.

Every applicant who is issued a clinical social worker license shall be examined by the board.

(b) Notwithstanding any other provision of law, the board may destroy all written and oral examination materials two years following the date of the examination.

On or after January 1, 2002, no applicant shall be eligible to participate in an oral examination if his or her passing score on the written examination occurred more than seven years before.

SEC. 43. Section 4992.3 of the Business and Professions Code is amended to read:

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

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or

registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

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

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022 or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person who uses or offers to use drugs in the course of performing clinical social work. This provision does not apply to any person also licensed as a physician and surgeon under Chapter 5 (commencing with Section 2000) or the Osteopathic Act who lawfully prescribes drugs to a patient under his or her care.

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

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

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity. For purposes of this subdivision, this misrepresentation includes, but is not

limited to, misrepresentation of the person's qualifications as an adoption service provider pursuant to Section 8502 of the Family Code.

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

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

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

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

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

(*l*) Performing, or holding one's self out as being able to perform, or offering to perform or permitting, any registered associate clinical social worker or intern under supervision to perform any professional services beyond the scope of the license authorized by this chapter.

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

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

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

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

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

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

(s) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

SEC. 44. Section 4992.6 of the Business and Professions Code is repealed.

SEC. 45. Section 4996.2 of the Business and Professions Code is amended to read:

4996.2. Each applicant shall furnish evidence satisfactory to the board that he or she complies with all of the following requirements:

(a) Is at least 21 years of age.

(b) Has received a master's degree from an accredited school of social work.

(c) Has had two years of supervised post-master's degree experience, as specified in Section 4996.20, 4996.21, or 4996.23.

(d) Has not committed any crimes or acts constituting grounds for denial of licensure under Section 480. The board shall not issue a registration or license to any person who has been convicted of any crime in this or another state or in a territory of the United States that involves sexual abuse of children or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(e) Has completed adequate instruction and training in the subject of alcoholism and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after January 1, 1986.

(f) Has completed instruction and training 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. This requirement applies only to applicants who begin graduate training on or after January 1, 1995. This 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.

(g) Has completed a minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 1807 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

(h) Has completed a minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in

Section 1807.2 of Title 16 of the California Code of Regulations. This training or coursework may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course.

SEC. 46. Section 4996.18 of the Business and Professions Code is amended to read:

4996.18. (a) Any person who wishes to be credited with experience toward licensure requirements shall register with the board as an associate clinical social worker prior to obtaining that experience. The application shall be made on a form prescribed by the board and shall be accompanied by a fee of ninety dollars ($90). An applicant for registration shall (1) possess a master's degree from an accredited school or department of social work, and (2) not have committed any crimes or acts constituting grounds for denial of licensure under Section 480. On and after January 1, 1993, an applicant who possesses a master's degree from a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education shall be eligible, and shall be required, to register as an associate clinical social worker in order to gain experience toward licensure if the applicant has not committed any crimes or acts that constitute grounds for denial of licensure under Section 480. That applicant shall not, however, be eligible for examination until the school or department of social work has received accreditation by the Commission on Accreditation of the Council on Social Work Education.

(b) Registration as an associate clinical social worker shall expire one year from the last day of the month during which it was issued. A registration may be renewed annually after initial registration by filing on or before the date on which the registration expires, an application for renewal, paying a renewal fee of seventy-five dollars ($75), and notifying the board whether he or she has been convicted, as defined in Section 490, of a misdemeanor or felony, and whether any disciplinary action has been taken by any regulatory or licensing board in this or any other state, subsequent to the registrant's last renewal. Each person who registers or has registered as an associate clinical social worker, may retain that status for a total of six years.

(c) Notwithstanding the limitations on the length of an associate registration in subdivision (b), an associate may apply for, and the board shall grant, one-year extensions beyond the six-year period when no grounds exist for denial, suspension, or revocation of the registration pursuant to Section 480. An associate shall be eligible to receive a maximum of three one-year extensions. An associate who practices pursuant to an extension shall not practice independently and shall comply with all requirements of this chapter governing experience, including supervision, even if the associate has completed the hours of experience required for licensure. Each extension shall commence on the

date when the last associate renewal or extension expires. An application for extension shall be made on a form prescribed by the board and shall be accompanied by a renewal fee of fifty dollars ($50). An associate who is granted this extension may work in all work settings authorized pursuant to this chapter.

(d) A registrant shall not provide clinical social work services to the public for a fee, monetary or otherwise, except as an employee.

(e) A registrant shall inform each client or patient prior to performing any professional services that he or she is unlicensed and is under the supervision of a licensed professional.

(f) Any experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has a personal relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(g) An applicant who possesses a master's degree from an approved school or department of social work shall be able to apply experience the applicant obtained during the time the approved school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education toward the licensure requirements, if the experience meets the requirements of Section 4996.20 or 4996.21. This subdivision shall apply retroactively to persons who possess a master's degree from an approved school or department of social work and who obtained experience during the time the approved school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education.

SEC. 47. Section 4996.21 of the Business and Professions Code is amended to read:

4996.21. The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) On or after January 1, 1999, a registrant shall have at least 3,200 hours of post-master's degree experience, supervised by a licensed clinical social worker, in providing clinical social work services as permitted by Section 4996.9. Experience shall consist of the following:

(1) A minimum of 2,000 hours in psychosocial diagnosis, assessment, and treatment, including psychotherapy and counseling.

(2) A maximum of 1,200 hours in client-centered advocacy, consultation, evaluation, and research.

(3) Experience shall have been gained in not less than two nor more than six years and shall have been gained within the six years immediately preceding the date on which the application for licensure was filed.

(b) Notwithstanding the requirements of subdivision (a), up to 1,000 hours of the required experience may be gained under the supervision of a licensed mental health professional acceptable to the board.

(1) Supervision means responsibility for and control of the quality of clinical social work services being provided.

(2) Consultation shall not be considered to be supervision.

(3) Supervision shall include at least one hour of direct supervisor contact for each week of experience claimed and shall include at least one hour of direct supervisor contact for every 10 hours of client contact in each setting where experience is gained. Not less than one-half of the hours of required supervision shall be individual supervision. The remaining hours may be group supervision. For purposes of this section, ''one hour of direct supervisor contact'' means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group setting of not more than eight persons.

(4) The supervisor and the supervisee shall develop a supervisory plan that describes the goals and objectives of supervision. These goals shall include the ongoing assessment of strengths and limitations and the assurance of practice in accordance with the laws and regulations. The associate shall submit to the board the initial supervisory plan within 30 days of commencement of supervision.

(c) A ''private practice setting'' is any setting other than a governmental entity, a school, college, or university, a nonprofit and charitable corporation, a licensed health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code, a social rehabilitation facility or a community treatment facility, as defined in subdivision (a) of Section 1502 of the Health and Safety Code, a pediatric day health and respite care facility, as defined in Section 1760.2 of the Health and Safety Code, or a licensed alcoholism or drug abuse recovery or treatment facility, as defined in Section 11834.02 of the Health and Safety Code.

(1) In a setting that is not a private practice, a registrant shall be employed on either a voluntary or paid basis.

(2) If volunteering, the registrant shall provide the board with a letter from his or her employer verifying his or her voluntary status upon application for licensure.

(3) If employed, the registrant shall provide the board with copies of his or her W-2 tax forms for each year of experience claimed upon application for licensure.

(d) Employment in a private practice setting shall not commence until the applicant has been registered as an associate clinical social worker. A registrant employed in a private practice setting shall not do any of the following:

(1) Pay his or her employer or supervisor for supervision, and shall receive fair remuneration from his or her employer.

(2) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(3) Perform services at any place except where the registrant's employer regularly conducts business.

(4) Have any proprietary interest in the employer's business.

(e) A person employed in a setting other than a private practice setting may obtain supervision from a person not employed by the registrant's employer if that person has signed a written agreement with the employer to take supervisory responsibility for the registrant's social work services.

SEC. 48. Section 4996.23 is added to the Business and Professions Code, to read:

4996.23. The experience required by subdivision (c) of Section 4996.2 shall meet the following criteria:

(a) All persons registered with the board on and after January 1, 2002, shall have at least 3,200 hours of post-master's degree supervised experience providing clinical social work services as permitted by Section 4996.9. This degree of experience shall consist of the following:

(1) A minimum of 2,000 hours in clinical psychosocial diagnosis, assessment, and treatment, including psychotherapy and counseling.

(2) A maximum of 1,200 hours in client-centered advocacy, consultation, evaluation, and research.

(3) Of the 2,000 clinical hours required in paragraph (1), no less than 750 hours shall be face-to-face individual or group psychotherapy provided to clients in the context of clinical social work services.

(4) A minimum of two years of supervised experience is required to be obtained over a period of not less than 104 weeks and shall have been gained within the six years immediately preceding the date on which the application for licensure was filed.

(b) Of the 3,200 hours of supervised experience required in subdivision (a), 2,200 hours shall be gained under the supervision of a licensed clinical social worker. The remaining 1,000 hours of the required supervised experience may be gained under the supervision of a licensed mental health professional acceptable to the board.

(c) Experience shall not be credited for more than 40 hours in any week.

(d) ''Supervision'' means responsibility for, and control of, the quality of clinical social work services being provided.

(1) Consultation shall not be considered to be supervision.

(2) Prior to the commencement of supervision, a supervisor shall comply with all requirements enumerated in Section 1870 of Title 16 of the California Code of Regulations and shall sign under penalty of

perjury the ''Responsibility Statement for Supervisors of an Associate Clinical Social Worker'' form.

(3) Supervised experience shall include at least one hour of direct supervisor contact for each week of experience claimed. A registrant shall receive an average of at least one hour of direct supervisor contact for every 10 hours of face-to-face psychotherapy performed in each setting in which experience is gained. No more than five hours of supervision, whether individual or group, shall be credited during any single week. Of the 3,200 hours of supervised experience required in subdivision (a), 1,600 hours must be individual supervision. The remaining hours may be group supervision. For purposes of this section, ''one hour of direct supervisor contact'' means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons receiving supervision.

(4) The supervisor and the supervisee shall develop a supervisory plan that describes the goals and objectives of supervision. These goals shall include the ongoing assessment of strengths and limitations and the assurance of practice in accordance with the laws and regulations. The associate shall submit to the board the initial supervisory plan within 30 days of commencement of supervision.

(e) Acceptable settings for gaining experience are private practice, a governmental entity, a school, college, or university, a nonprofit and charitable corporation, a licensed health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code, a social rehabilitation facility or a community care facility, as defined in subdivision (a) of Section 1502 of the Health and Safety Code, a pediatric day health and respite care facility, as defined in Section 1760.2 of the Health and Safety Code, or a licensed alcoholism or drug abuse recovery or treatment facility, as defined in Section 11834.02 of the Health and Safety Code.

(1) In a setting that is not a private practice, a registrant shall be employed on either a voluntary or paid basis.

(2) If volunteering, the registrant shall provide the board with a letter from his or her employer verifying his or her voluntary status upon application for licensure.

(3) If employed, the registrant shall provide the board with copies of his or her W-2 tax forms for each year of experience claimed upon application for licensure.

(f) Employment in a private practice setting shall not commence until the applicant has been registered as an associate clinical social worker. A registrant employed in a private practice setting shall not do any of the following:

(1) Pay his or her employer or supervisor for supervision, and shall receive fair remuneration from his or her employer.

(2) Receive any remuneration from patients or clients and shall only be paid by his or her employer.

(3) Perform services at any place except where the registrant's employer and supervisor regularly conduct business.

(4) Have any proprietary interest in the employer's business.

(g) A person employed in a setting other than a private practice setting may obtain supervision from a person not employed by the registrant's employer if that person has signed a written agreement with the employer to take supervisory responsibility for the registrant's social work services.

(h) Notwithstanding any other provision of law, registrants and applicants for examination shall receive a minimum of one hour of supervision per week for each setting in which he or she is working.

SEC. 49. Section 4999.2 of the Business and Professions Code is amended to read:

4999.2. (a) In order to obtain and maintain a registration, in-state or out-of-state telephone medical advice services shall comply with the requirements established by the department. Those requirements shall include, but shall not be limited to, all of the following:

(1) (A) Ensuring that all staff who provide medical advice services are appropriately licensed, certified, or registered as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act, as a dentist pursuant to Chapter 4 (commencing with Section 1600), as a dental hygienist pursuant to Section 1758 et seq., as a psychologist pursuant to Chapter 6.6 (commencing with Section 2900), as a marriage, family and child counselor pursuant to Chapter 13 (commencing with Section 4980), as an optometrist pursuant to Chapter 7 (commencing with Section 3000), as a chiropractor pursuant to the Chiropractic Initiative Act, and operating consistent with the laws governing their respective scopes of practice in the state within which they provide telephone medical advice services, except as provided in paragraph (2).

(B) Ensuring that all staff who provide telephone medical advice services from an out-of-state location are health care professionals as identified in subparagraph (A) that are licensed, registered, or certified in the state within which they are providing the telephone medical advice services and operating consistent with the laws governing their respective scopes of practice.

(2) Ensuring that all registered nurses providing telephone medical advice services to both in-state and out-of-state business entities registered pursuant to this chapter shall be licensed pursuant to Chapter 6 (commencing with Section 2700).

(3) Ensuring that the telephone medical advice provided is consistent with good professional practice.

(4) Maintaining records of telephone medical advice services, including records of complaints, provided to patients in California for a period of at least five years.

(5) Complying with all directions and requests for information made by the department.

(b) To the extent permitted by Article VII of the California Constitution, the department may contract with a private nonprofit accrediting agency to evaluate the qualifications of applicants for registration pursuant to this chapter, and to make recommendations to the department.

SEC. 50. Section 4999.7 of the Business and Professions Code is amended to read:

4999.7. (a) Nothing in this section shall limit, preclude, or otherwise interfere with the practices of other persons licensed or otherwise authorized to practice, under any other provision of this division, telephone medical advice services consistent with the laws governing their respective scopes of practice, or licensed under the Osteopathic Initiative Act or the Chiropractic Initiative Act and operating consistent with the laws governing their respective scopes of practice.

(b) For the purposes of this chapter, ''telephone medical advice'' means a telephonic communication between a patient and a health care professional, wherein the health care professional's primary function is to provide to the patient a telephonic response to the patient's questions regarding his or her or a family member's medical care or treatment.

(c) For the purposes of this chapter, ''health care professional'' is a staff person described in Section 4999.2 who provides medical advice services and is appropriately licensed, certified, or registered as a registered nurse pursuant to Chapter 6 (commencing with Section 2700), a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act, a dentist pursuant to Chapter 4 (commencing with Section 1600), a dental hygienist pursuant to Section 1758 et seq., a psychologist pursuant to Chapter 6.6 (commencing with Section 2900), a marriage and family therapist pursuant to Chapter 13 (commencing with Section 4980), an optometrist pursuant to Chapter 7 (commencing with Section 3000), a chiropractor pursuant to the Chiropractic Initiative Act, and who is operating consistent with the laws governing his or her respective scopes of practice in the state in which he or she provides telephone medical advice services.

SEC. 51. Section 5536.26 is added to the Business and Professions Code, to read:

5536.26. The use of the words ''certify'' or ''certification'' by a licensed architect in the practice of architecture constitutes an expression

of professional opinion regarding those facts or findings that are the subject of the certification, and does not constitute a warranty or guarantee, either expressed or implied. Nothing in this section is intended to alter the standard of care ordinarily exercised by a licensed architect.

SEC. 52. Section 7006 of the Business and Professions Code is amended to read:

7006. The board shall meet at least once each calendar quarter for the purpose of transacting business as may properly come before it.

Special meetings of the board may be held at times as the board may provide in its bylaws. Four members of the board may call a special meeting at any time.

SEC. 53. Section 7026 of the Business and Professions Code is amended to read:

7026. ''Contractor,'' for the purposes of this chapter, is synonymous with ''builder'' and, within the meaning of this chapter, a contractor is any person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, parking facility, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, or the cleaning of grounds or structures in connection therewith, or the preparation and removal of roadway construction zones, lane closures, flagging, or traffic diversions, or the installation, repair, maintenance, or calibration of monitoring equipment for underground storage tanks, and whether or not the performance of work herein described involves the addition to, or fabrication into, any structure, project, development or improvement herein described of any material or article of merchandise. ''Contractor'' includes subcontractor and specialty contractor. ''Roadway'' includes, but is not limited to, public or city streets, highways, or any public conveyance.

SEC. 54. Section 7027.3 of the Business and Professions Code is amended to read:

7027.3. Any person, licensed or unlicensed, who willfully and intentionally uses, with intent to defraud, a contractor's license number that does not correspond to the number on a currently valid contractor's license held by that person, is punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in state prison, or in county jail for not more than one year, or by both that fine and imprisonment. The penalty provided by this section is cumulative to the penalties available under all other laws of this state. If, upon investigation, the registrar has probable cause to believe that an

unlicensed individual is in violation of this section, the registrar may issue a citation pursuant to Section 7028.7.

SEC. 55. Section 7028.7 of the Business and Professions Code is amended to read:

7028.7. If upon inspection or investigation, either upon complaint or otherwise, the registrar has probable cause to believe that a person is acting in the capacity of or engaging in the business of a contractor or salesperson within this state without having a license or registration in good standing to so act or engage, and the person is not otherwise exempted from this chapter, the registrar shall issue a citation to that person. Within 72 hours of receiving notice that a public entity is intending to award, or has awarded, a contract to an unlicensed contractor, the registrar shall give written notice to the public entity that a citation may be issued if a contract is awarded to an unlicensed contractor. If after receiving the written notice from the registrar that the public entity has awarded or awards the contract to an unlicensed contractor, the registrar may issue a citation to the responsible officer or employee of the public entity as specified in Section 7028.15. Each citation shall be in writing and shall describe with particularity the basis of the citation. Each citation shall contain an order of abatement and an assessment of a civil penalty in an amount not less than two hundred dollars ($200) nor more than fifteen thousand dollars ($15,000). With the approval of the Contractors' State License Board, the registrar shall prescribe procedures for the issuance of a citation under this section. The Contractors' State License Board shall adopt regulations covering the assessment of a civil penalty that shall give due consideration to the gravity of the violation, and any history of previous violations. The sanctions authorized under this section shall be separate from, and in addition to, all other remedies either civil or criminal.

SEC. 56. Section 7028.13 of the Business and Professions Code is amended to read:

7028.13. (a) After the exhaustion of the review procedures provided for in Sections 7028.10 to 7028.12, inclusive, the registrar may apply to the appropriate superior court for a judgment in the amount of the civil penalty and an order compelling the cited person to comply with the order of abatement. The application, which shall include a certified copy of the final order of the registrar, shall constitute a sufficient showing to warrant the issuance of the judgment and order. If the cited person did not appeal the citation, a certified copy of the citation and proof of service, and a certification that the person cited is not or was not a licensed contractor or applicant for a license at the time of issuance of the citation, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(b) Notwithstanding any other provision of law, the registrar may delegate the collection of the civil penalty for any citation issued to any person or entity legally authorized to engage in collections. Costs of collection shall be borne by the person cited. The registrar shall not delegate the authority to enforce the order of abatement.

(c) Notwithstanding any other provision of law, the registrar shall have the authority to assign the rights to the civil penalty, or a portion thereof, for adequate consideration. The assignee and the registrar shall have all the rights afforded under the ordinary laws of assignment of rights and delegation of duties. The registrar shall not assign the order of abatement. The assignee may apply to the appropriate superior court for a judgment based upon the assigned rights upon the same evidentiary showing as set forth in subdivision (a).

(d) Notwithstanding any other provision of law, including subdivisions (1) and (2) of Section 340 of the Code of Civil Procedure, the registrar or his or her designee or assignee shall have four years from the date of the final order to collect civil penalties except that the registrar or his or her designee or assignee shall have 10 years from the date of the judgment to enforce civil penalties on citations that have been converted to judgments through the process described in subdivisions (a) and (c).

SEC. 57. Section 7059.1 of the Business and Professions Code is amended to read:

7059.1. (a) A licensee shall not use any business name that indicates the licensee is qualified to perform work in classifications other than those issued for that license, or any business name that is incompatible with the type of business entity licensed.

(b) A licensee shall not conduct business under more than one name for each license. Nothing in this section shall prevent a licensee from obtaining a business name change as otherwise provided by this chapter.

SEC. 58. Section 7071.11 of the Business and Professions Code is amended to read:

7071.11. (a) A copy of the complaint in a civil action commenced by a person claiming against a bond required by this article shall be served by registered or certified mail upon the registrar by the clerk of the court at the time the action is commenced and the registrar shall maintain a record, available for public inspection, of all actions so commenced. The aggregate liability of a surety on a claim for wages and fringe benefits brought against any bond required by this article, other than a bond required by Section 7071.8, shall not exceed the sum of four thousand dollars ($4,000). If any bond which may be required is insufficient to pay all claims in full, the sum of the bond shall be distributed to all claimants in proportion to the amount of their respective claims. Any action, other than an action to recover wages or fringe benefits, against a contractor's bond or a bond of a qualifying

individual filed by an active licensee shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover wages or fringe benefits, against a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within two years after the expiration of the license period during which the act or omission occurred, or within two years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within two years after the last date for which a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first. A claim to recover wages or fringe benefits shall be brought within six months from the date that the wage or fringe benefit delinquencies were discovered, but in no event shall a civil action thereon be brought later than two years from the date the wage or fringe benefit contributions were due.

(b) When the surety makes payment on any claim against a bond required by this article, whether or not payment is made through a court action or otherwise, the surety shall, within 30 days of the payment, notify the registrar. The notice shall contain, on a form prescribed by the registrar, the name and license number of the contractor, the surety bond number, the amount of payment, the statutory basis upon which the claim is made, and the names of the person or persons to whom payments are made.

(c) Any judgment or admitted claim against, or good faith payment from, a bond required by this article shall constitute grounds for disciplinary action against the licensee, except in those cases of good faith payment where the licensee has, in writing, timely instructed the surety not to make payment from the bond on his or her account, upon the specific grounds that (1) the claim is opposed by the licensee, and (2) the licensee has, in writing, previously directed to the surety a specific and reasonable basis for his or her opposition to payment. The license may not be reissued or reinstated while any judgment or admitted claim in excess of the amount of the bond remains unsatisfied. Further, the license may not be reissued or reinstated while any surety remains unreimbursed for loss and expense sustained on any bond issued for the licensee or for any entity of which any officer, director, member, partner, or qualifying person was an officer, director, member, partner, or qualifying person of the licensee while the licensee was subject to disciplinary action under this section. The board shall require the licensee to file a new bond in an amount as required pursuant to Section 7071.8.

(d) Legal fees may not be charged against the bond by the board.

(e) In any case in which a claim is filed against a deposit given in lieu of a bond by any employee or by an employee organization on behalf of an employee, concerning wages or fringe benefits based upon the employee's employment, claims for the nonpayment shall be filed with the Labor Commissioner. The Labor Commissioner shall, pursuant to the authority vested by Section 96.5 of the Labor Code, conduct hearings to determine whether or not the wages or fringe benefits should be paid to the complainant. Upon a finding by the commissioner that the wages or fringe benefits should be paid to the complainant, the commissioner shall notify the registrar of the findings. The registrar shall not make payment from the deposit on the basis of findings by the commissioner for a period of 10 days following determination of the findings. If, within the period, the complainant or the contractor files written notice with the registrar and the commissioner of an intention to seek judicial review of the findings pursuant to Section 11523 of the Government Code, the registrar shall not make payment, if an action is actually filed, except as determined by the court. If, thereafter, no action is filed within 60 days following determination of findings by the commissioner, the registrar shall make payment from the deposit to the complainant.

(f) Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a contractor's bond or bond of a qualifying individual filed by an active licensee shall be brought within three years after the expiration of the license period during which the act or omission occurred, or within three years after the date the license was inactivated, canceled, or revoked by the board, whichever first occurs. Any action, other than an action to recover wages or fringe benefits, against a deposit given in lieu of a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought within three years after the expiration of the license period during which the act or omission occurred, or within three years of the date the license of the active licensee was inactivated, canceled, or revoked by the board, or within three years after the last date for which a deposit given in lieu of a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first. If the board is notified of a complaint relative to a claim against the deposit, the deposit shall not be released until the complaint has been adjudicated.

SEC. 59. Section 7074 of the Business and Professions Code is amended to read:

7074. (a) Except as otherwise provided by this section, an application for an original license, for an additional classification or for a change of qualifier shall become void when:

(1) The applicant or examinee for the applicant has failed to appear for the scheduled qualifying examination and fails to request and pay the fee for rescheduling within 90 days of notification of failure to appear,

or, after being rescheduled, has failed to appear for a second examination.

(2) The applicant or the examinee for the applicant has failed to achieve a passing grade in the scheduled qualifying examination, and fails to request and pay the fee for rescheduling within 90 days of notification of failure to pass the examination.

(3) The applicant or the examinee for the applicant has failed to achieve a passing grade in the qualifying examination within 18 months after the application has been deemed acceptable by the board.

(4) The applicant for an original license, after having been notified to do so, fails to pay the initial license fee within 90 days from the date of the notice.

(5) The applicant, after having been notified to do so, fails to file within 90 days from the date of the notice any bond or cash deposit or other documents that may be required for issuance or granting pursuant to this chapter.

(6) After filing, the applicant withdraws the application.

(7) The applicant fails to return the application rejected by the board for insufficiency or incompleteness within 90 days from the date of original notice or rejection.

(8) The application is denied after disciplinary proceedings conducted in accordance with the provisions of this code.

(b) The void date on an application may be extended up to 90 days or one examination may be rescheduled without a fee upon documented evidence by the applicant that the failure to complete the application process or to appear for an examination was due to a medical emergency or other circumstance beyond the control of the applicant.

(c) An application voided pursuant to the provisions of this section shall remain in the possession of the registrar for the period as he or she deems necessary and shall not be returned to the applicant. Any reapplication for a license shall be accompanied by the fee fixed by this chapter.

SEC. 60. Section 7091 of the Business and Professions Code is amended to read:

7091. (a) A complaint against a licensee alleging commission of any patent acts or omissions that may be grounds for legal action shall be filed in writing with the registrar within four years after the act or omission alleged as the ground for the disciplinary action. An accusation or citation against a licensee shall be filed within four years after the patent act or omission alleged as the ground for disciplinary action or within 18 months from the date of the filing of the complaint with the registrar, whichever is later, except that with respect to an accusation alleging a violation of Section 7112, the accusation may be filed within two years after the discovery by the registrar or by the board of the

alleged facts constituting the fraud or misrepresentation prohibited by the section.

(b) A complaint against a licensee alleging commission of any latent acts or omissions that may be grounds for legal action pursuant to subdivision (a) of Section 7109 regarding structural defects, as defined by regulation, shall be filed in writing with the registrar within 10 years after the act or omission alleged as the ground for the disciplinary action. An accusation and citation against a licensee shall be filed within 10 years after the latent act or omission alleged as the ground for disciplinary action or within 18 months from the date of the filing of the complaint with the registrar, whichever is later, except that with respect to an accusation alleging a violation of Section 7112, the accusation may be filed within two years after the discovery by the registrar or by the board of the alleged facts constituting the fraud or misrepresentation prohibited by Section 7112. As used in this section ''latent act or omission'' means an act or omission that is not apparent by reasonable inspection.

(c) An accusation regarding an alleged breach of an express, written warranty for a period in excess of the time periods specified in subdivisions (a) and (b) issued by the contractor shall be filed within the duration of that warranty.

(d) The proceedings under this article shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the registrar shall have all the powers granted therein.

(e) Nothing in this section shall be construed to affect the liability of a surety or the period of limitations prescribed by law for the commencement of actions against a surety or cash deposit.

SEC. 61. Section 7112 of the Business and Professions Code is amended to read:

7112. Omission or misrepresentation of a material fact by an applicant or a licensee in obtaining, or renewing a license, or in adding a classification to an existing license constitutes a cause for disciplinary action.

SEC. 62. Section 7112.1 is added to the Business and Professions Code, to read:

7112.1. Any classification that has been added to an existing license record as a result of an applicant or licensee omitting or misrepresenting a material fact shall be expunged from the license record pursuant to a final order of the registrar evidencing a violation of Section 7112.

SEC. 63. Section 7153 of the Business and Professions Code is amended to read:

7153. (a) It is a misdemeanor for any person to engage in the occupation of salesperson for one or more home improvement

contractors within this state without having a registration issued by the registrar for each of the home improvement contractors by whom he or she is employed as a home improvement salesperson. If, upon investigation, the registrar has probable cause to believe that a salesperson is in violation of this section, the registrar may issue a citation pursuant to Section 7028.7.

It is a misdemeanor for any person to engage in the occupation of salesperson of home improvement goods or services within this state without having a registration issued by the registrar.

(b) Any security interest taken by a contractor, to secure any payment for the performance of any act or conduct described in Section 7151 that occurs on or after January 1, 1995, is unenforceable if the person soliciting the act or contract was not a duly registered salesperson or was not exempt from registration pursuant to Section 7152 at the time the homeowner signs the home improvement contract solicited by the salesperson.

SEC. 64. Section 17910.5 of the Business and Professions Code is amended to read:

17910.5. (a) No person shall adopt any fictitious business name which includes ''Corporation,'' ''Corp.,'' ''Incorporated,'' or ''Inc.'' unless that person is a corporation organized pursuant to the laws of this state or some other jurisdiction.

(b) No person shall adopt any fictitious business name that includes ''Limited Liability Company'' or ''LLC'' or ''LC'' unless that person is a limited liability company organized pursuant to the laws of this state or some other jurisdiction. A person is not prohibited from using the complete words ''Limited'' or ''Company'' or their abbreviations in the person's business name as long as that use does not imply that the person is a limited liability company.

(c) A county clerk shall not accept a fictitious business name statement which would be in violation of this section.

SEC. 65. Section 17913 of the Business and Professions Code is amended to read:

17913. (a) The fictitious business name statement shall contain all of the information required by this subdivision and shall be substantially in the following form:

FICTITIOUS BUSINESS NAME STATEMENT

The following person (persons) is (are) doing business as

*_____

at ** _____:

*** _____

_____

_____

_____

This business is conducted by **** _____

The registrant commenced to transact business under the fictitious business name or names listed above on

***** _____

I declare that all information in this statement is true and correct.(A registrant who declares as true information which he or she knows to be false is guilty of a crime.)

Signed _____

Statement filed with the County Clerk of ____ County on _____

NOTICE—THIS FICTITIOUS NAME STATEMENT EXPIRES FIVE YEARS FROM THE DATE IT WAS FILED IN THE OFFICE OF THE COUNTY CLERK. A NEW FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THAT TIME.

THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE).

(b) The statement shall contain the following information set forth in the manner indicated in the form provided by subdivision (a):

(1) Where the asterisk (*) appears in the form, insert the fictitious business name or names. Only those businesses operated at the same address may be listed on one statement.

(2) Where the two asterisks (**) appear in the form: If the registrant has a place of business in this state, insert the street address of his or her principal place of business in this state. If the registrant has no place of business in this state, insert the street address of his or her principal place of business outside this state.

(3) Where the three asterisks (***) appear in the form: If the registrant is an individual, insert his or her full name and residence address. If the registrant is a partnership or other association of persons, insert the full name and residence address of each general partner. If the registrant is a limited liability company, insert the name of the limited liability company as set out in its articles of organization and the state of organization. If the registrant is a business trust, insert the full name and

address of each trustee. If the registrant is a corporation, insert the name of the corporation as set out in its articles of incorporation and the state of incorporation.

(4) Where the four asterisks (****) appear in the form, insert whichever of the following best describes the nature of the business: (i) ''an individual,'' (ii) ''a general partnership,'' (iii) ''a limited partnership,'' (iv) ''a limited liability company,'' (v) ''an unincorporated association other than a partnership,'' (vi) ''a corporation,'' (vii) ''a business trust,'' (viii) ''copartners,'' (ix) ''husband and wife,'' (x) ''joint venture,'' or (xi) ''other—please specify.''

(5) Where the five asterisks (*****) appear in the form, insert the date on which the registrant first commenced to transact business under the fictitious business name or names listed, if already transacting business under that name or names. If the registrant has not yet commenced to transact business under the fictitious business name or names listed, insert the statement, ''Not applicable.''

(c) The registrant shall declare that all of the information in the statement is true and correct. A registrant who declares as true any material matter pursuant to this section which he or she knows to be false is guilty of a misdemeanor.

SEC. 66. Section 17917 of the Business and Professions Code is amended to read:

17917. (a) Within 30 days after a fictitious business name statement has been filed pursuant to this chapter, the registrant shall cause a statement in the form prescribed by subdivision (a) of Section 17913 to be published pursuant to Government Code Section 6064 in a newspaper of general circulation in the county in which the principal place of business of the registrant is located or, if there is no such newspaper in that county, then in a newspaper of general circulation in an adjoining county. If the registrant does not have a place of business in this state, the notice shall be published in a newspaper of general circulation in Sacramento County.

(b) Subject to the requirements of subdivision (a), the newspaper selected for the publication of the statement should be one that circulates in the area where the business is to be conducted.

(c) If a refiling is required because the prior statement has expired, the refiling need not be published unless there has been a change in the information required in the expired statement, provided the refiling is filed within 40 days of the date the statement expired.

(d) An affidavit showing the publication of the statement shall be filed with the county clerk within 30 days after the completion of the publication.

SEC. 67. Section 17923 of the Business and Professions Code is amended to read:

17923. (a) Any person who is a general partner in a partnership that is or has been regularly transacting business under a fictitious business name may, upon withdrawing as a general partner, file a statement of withdrawal from the partnership operating under a fictitious business name. The statement shall be executed by the person filing the statement in the same manner as a fictitious business name statement and shall be filed with the county clerk of the county where the partnership filed its fictitious business name statement.

(b) The statement shall include:

(1) The fictitious business name of the partnership.

(2) The date on which the fictitious business name statement for the partnership was filed and the county where filed.

(3) The street address of its principal place of business in this state or, if it has no place of business in this state, the street address of its principal place of business outside this state, if any.

(4) The full name and residence of the person withdrawing as a partner.

(c) The statement of withdrawal from the partnership operating under a fictitious business name shall be published in the same manner as the fictitious business name statement and an affidavit showing the publication of the statement shall be filed with the county clerk after the completion of the publication.

(d) The withdrawal of a general partner does not cause a fictitious business name statement to expire if the withdrawing partner files a statement of withdrawal in accordance with subdivisions (a) and (b) and the requirement of subdivision (c) is satisfied.

SEC. 67.2. 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). 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 that 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 that chooses to participate in the council and that 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 that chooses to participate in the council and that 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, with their initial terms being served on a staggered basis. A person exempt from the requirements of this chapter pursuant to Section 22258 is not eligible for appointment to the council, other than an employee of an individual in an exempt category.

SEC. 67.4. 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. 68. Section 22355 of the Business and Professions Code is amended to read:

22355. (a) The county clerk shall maintain a register of process servers and assign a number and issue an identification card to each

process server. The county clerk shall issue a temporary identification card, for no additional fee, to applicants who are required to submit fingerprint cards for background checks to the Federal Bureau of Investigation and the Department of Justice. This card shall be valid for 120 days. If clearance is received from the Federal Bureau of Investigation and the Department of Justice within 120 days, the county clerk shall immediately issue a permanent identification card to the applicant. Upon request of the applicant, the permanent identification card shall be mailed to the applicant at his or her address of record. Upon renewal of a certificate of registration, the same number shall be assigned, provided there is no lapse in the period of registration.

(b) The temporary and permanent identification cards shall be $3^3/_8$ inches by $2^1/_4$ inches and shall contain at the top the title, ''Registered Process Server,'' followed by the registrant's name, address, registration number, date of expiration, and county of registration. In the case of a natural person, it shall also contain a photograph of the registrant in the lower left corner.

SEC. 69. Section 22453.1 of the Business and Professions Code is amended to read:

22453.1. Notwithstanding Section 22453, any person registered pursuant to Chapter 16 (commencing with Section 22350) shall pay a fee of one hundred dollars ($100) instead of the fee of one hundred seventy-five dollars ($175) otherwise required by Section 22453.

SEC. 70. Section 109948.1 of the Health and Safety Code is amended to read:

109948.1. (a) ''Home medical device services'' means the delivery, installation, maintenance, replacement of, or instruction in the use of, home medical devices used by a sick or disabled individual to allow the individual to be maintained in a residence.

(b) ''Home medical device'' means a device intended for use in a home care setting including, but not limited to, all of the following:

(1) Oxygen delivery systems and prefilled cylinders.
(2) Ventilators.
(3) Continuous Positive Airway Pressure devices (CPAP).
(4) Respiratory disease management devices.
(5) Hospital beds and commodes.
(6) Electronic and computer driven wheelchairs and seating systems.
(7) Apnea monitors.
(8) Low air loss continuous pressure management devices.
(9) Transcutaneous Electrical Nerve Stimulator (TENS) units.
(10) Prescription devices.
(11) Disposable medical supplies including, but not limited to, incontinence supplies as defined in Section 14125.1 of the Welfare and Institutions Code.

(12) In vitro diagnostic tests.

(13) Any other similar device as defined in regulations adopted by the department.

(c) The term ''home medical device'' does not include any of the following:

(1) Devices used or dispensed in the normal course of treating patients by hospitals and nursing facilities, other than devices delivered or dispensed by a separate unit or subsidiary corporation of a hospital or nursing facility or agency that is in the business of delivering home medical devices to an individual's residence.

(2) Prosthetics and orthotics.

(3) Automated external defibrillators (AEDs).

(4) Devices provided through a physician's office incident to a physician's service.

(5) Devices provided by a licensed pharmacist that are used to administer drugs that can be dispensed only by a licensed pharmacist.

(6) Enteral and parenteral devices provided by a licensed pharmacist.

SEC. 71. Section 111656 of the Health and Safety Code is amended to read:

111656. (a) No person shall conduct a home medical device retail facility business in the State of California unless he or she has obtained a license from the department. A license shall be required for each home medical device retail facility owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a home medical device retail facility in more than one location. The license shall be renewed annually and shall not be transferable. The licensee shall be responsible for assuring compliance with all requirements of this article pertaining to home medical device retail facilities.

(b) Applications for a home medical device retail facility license shall be made on a form furnished by the department. The department may require any information it deems reasonably necessary to carry out the purposes of this section.

(c) A warehouse owned by a home medical device retail facility the primary purpose of which is storage, not dispensing of home medical devices to patients, shall be licensed at a fee one-half of that for a home medical device retail facility. There shall be no separate or additional license fee for warehouse premises owned by a home medical device retail facility that are physically connected to the retail premises or that share common access.

(d) The department may, at its discretion, issue a temporary license when the ownership of a home medical device retail facility is transferred from one person to another upon any conditions and for the periods of time as the department determines to be in the public interest.

A temporary license fee shall be established by the department at an amount not to exceed the annual fee for renewal of a license to conduct a home medical device retail facility.

(e) Notwithstanding any other provision of law, a licensed home medical device retail facility may furnish a prescription device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with facility regulations of the State Department of Health Services set forth in Title 22 of the California Code of Regulations.

(f) The licensure requirements of this section shall not apply to the following entities or practitioners, unless the entities or practitioners furnish home medical devices or home medical device services through a separate entity including, but not limited to, a corporate entity, division, or other business entity:

(1) Home health agencies that do not have a Part B Medicare supplier number.

(2) Hospitals, excluding providers of home medical devices that are owned or related to a hospital.

(3) Manufacturers and wholesale distributors, if not selling directly to the patient.

(4) Health care practitioners authorized to prescribe or order home medical devices or who use home medical devices or who use home medical devices to treat their patients.

(5) Licensed pharmacists and pharmacies. Pharmacies that sell or rent home medical devices shall be governed by the provisions of Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code and any rules and regulations adopted by the California State Board of Pharmacy.

(6) Licensed hospice programs.

(7) Licensed nursing homes.

(8) Licensed veterinarians.

(9) Licensed dentists.

(10) Emergency medical services provider.

(11) Breast feeding support programs.

SEC. 72. Section 111656.2 of the Health and Safety Code is amended to read:

111656.2. (a) The following standards shall apply to all home medical device retail facilities:

(1) Each retail facility shall store prescription devices in a manner that does not allow a customer direct access or self-service.

(2) Each retail facility shall maintain the premises, fixtures, and equipment in a clean and orderly condition.

(3) Each retail facility shall maintain the premises in a dry, well-ventilated condition, free from contamination or other conditions that may render home medical devices unfit for their intended use.

(b) The department may by regulation impose any other standards pertaining to the acquisition, storage, and maintenance of prescription devices or other goods or to the maintenance or condition of the licensed premises of any home medical device retail facility as the department determines are reasonably necessary.

SEC. 73. Section 111656.4 of the Health and Safety Code is amended to read:

111656.4. Section 4051 of the Business and Professions Code shall not prohibit a home medical device retail facility from selling or dispensing prescription devices if the department finds that sufficient qualified supervision is employed by the home medical device retail facility to adequately safeguard and protect the public health. Each person applying to the department for this exemption shall meet the following requirements to obtain and maintain the exemption:

(a) A licensed pharmacist or an exemptee who meets the requirements set forth in paragraphs (1) to (5), inclusive, and whose license of exemption is currently valid, shall be in charge of the home medical device retail facility.

(1) He or she shall be a high school graduate or possess a general education development equivalent.

(2) He or she shall have a minimum of one year of paid work experience related to the distribution or dispensing of dangerous drugs or dangerous devices.

(3) He or she shall complete a training program that addresses each of the following subjects that are applicable to him or her:

(A) Knowledge and understanding of state and federal laws relating the distribution of dangerous drugs and dangerous devices.

(B) Knowledge and understanding of state and federal laws relating the distribution of controlled substances.

(C) Knowledge and understanding of quality control systems.

(D) Knowledge and understanding of the United States Pharmacopoeia standards relating to the safe storage and handling of drugs.

(E) Knowledge and understanding relating to the safe storage and handling of home medical devices.

(F) Knowledge and understanding of prescription terminology, abbreviations, and format.

(4) The department may, by regulation, require training programs that include additional material.

(5) The department shall not issue an exemptee license until the applicant provides proof of completion of the required training that the department determines is adequate to fulfill these requirements.

(b) The licensed pharmacist or exemptee shall be on the premises at all times that prescription devices are available for sale or fitting unless the prescription devices are stored separately from other merchandise and are under the exclusive control of the licensed pharmacist or exemptee. A licensed pharmacist or an exemptee need not be present in the warehouse facility of a home medical device retail facility unless the department establishes that requirement by regulation based upon the need to protect the public.

(c) The department may require an exemptee to complete a designated number of hours of coursework in department-approved courses of home health education in the disposition of any disciplinary action taken against the exemptee.

(d) Each premises maintained by a home medical device retail facility shall have a license issued by the department and shall have a licensed pharmacist or exemptee on the premises if prescription devices are furnished, sold, or dispensed.

(e) A home medical device retail facility may establish locked storage (a lock box or locked area) for emergency or after working hours furnishing of prescription devices. Locked storage may be installed or placed in a service vehicle of the home medical device retail facility for emergency or after hours service to patients having prescriptions for prescription devices.

(f) The department may by regulation authorize a licensed pharmacist or exemptee to direct an employee of the home medical device retail facility who operates the service vehicle equipped with locked storage described in subdivision (e) to deliver a prescription device from the locked storage to patients having prescriptions for prescription devices. These regulations shall establish inventory requirements for the locked storage by a licensed pharmacist or exemptee to take place shortly after a prescription device has been delivered from the locked storage to a patient.

SEC. 74. Section 29.2 of this bill incorporates amendments to Section 4115 of the Business and Professions Code proposed by both this bill and AB 536. 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 4115 of the Business and Professions Code, and (3) this bill is enacted after AB 536, in which case Section 29 of this bill shall not become operative.

SEC. 75. 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.

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## CHAPTER 729

An act to amend Sections 1954.52, 1962, 1962.5, and 1962.7 of, and to add and repeal Section 1946.1 of, the Civil Code, and to amend Section 1161 of the Code of Civil Procedure, relating to real property.

[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 1946.1 is added to the Civil Code, to read:

1946.1. (a) Notwithstanding Section 1946, a hiring of residential real property located in the City of Los Angeles, the City of Santa Monica, or the City of West Hollywood, for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of his or her intention to terminate the tenancy, as provided in this section.

(b) An owner of a residential dwelling giving notice pursuant to this section shall give notice at least 60 days prior to the proposed date of termination. A tenant giving notice pursuant to this section shall give notice for a period at least as long as the term of the periodic tenancy prior to the proposed date of termination.

(c) The notices required by this section shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure or by sending a copy by certified or registered mail.

(d) The additional notice provided by this section shall apply only to a tenant who has been living in a dwelling for at least one year.

(e) The additional notice provided by this section does not apply if all of the following are true:

(1) The dwelling or unit is alienable separate from the title to any other dwelling unit.

(2) The dwelling or unit was sold to a bona fide purchaser for value.

(3) The purchaser is a natural person or persons.

(4) The purchaser gives notice no more than 30 days after acquiring the property.

(5) Notice was not previously given to the tenant pursuant to this section.

(6) The purchaser in good faith intends to reside in the property for at least one full year after the termination of the tenancy.

(f) The additional notice provided by this section does not apply in a city in which an entity that regulates residential rents determines that the rental vacancy rate in the city exceeds 10 percent.

(g) This section may not be construed to affect the authority of a public entity that otherwise exists to regulate or monitor the basis for eviction.

(h) 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 1954.52 of the Civil Code is amended to read:

1954.52. (a) Notwithstanding any other provision of law, an owner of residential real property may establish the initial and all subsequent rental rates for a dwelling or a unit about which any of the following is true:

(1) It has a certificate of occupancy issued after February 1, 1995.

(2) It has already been exempt from the residential rent control ordinance of a public entity on or before February 1, 1995, pursuant to a local exemption for newly constructed units.

(3) (A) It is alienable separate from the title to any other dwelling unit or is a subdivided interest in a subdivision, as specified in subdivision (b), (d), or (f) of Section 11004.5 of the Business and Professions Code.

(B) This paragraph does not apply to either of the following:

(i) A dwelling or unit where the preceding tenancy has been terminated by the owner by notice pursuant to Section 1946 or has been terminated upon a change in the terms of the tenancy noticed pursuant to Section 827.

(ii) A condominium dwelling or unit that has not been sold separately by the subdivider to a bona fide purchaser for value. The initial rent amount of such a unit for purposes of this chapter shall be the lawful rent in effect on May 7, 2001, unless the rent amount is governed by a different provision of this chapter. However, if a condominium dwelling

or unit meets the criteria of paragraph (1) or (2) of subdivision (a), or if all the dwellings or units except one have been sold separately by the subdivider to bona fide purchasers for value, and the subdivider has occupied that remaining unsold condominium dwelling or unit as his or her principal residence for at least one year after the subdivision occurred, then subparagraph (A) of paragraph (3) shall apply to that unsold condominium dwelling or unit.

(C) Where a dwelling or unit in which the initial or subsequent rental rates are controlled by an ordinance or charter provision in effect on January 1, 1995, the following shall apply:

(i) An owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all existing and new tenancies in effect on or after January 1, 1999, if the tenancy in effect on or after January 1, 1999, was created between January 1, 1996, and December 31, 1998.

(ii) Commencing on January 1, 1999, an owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all new tenancies if the previous tenancy was in effect on December 31, 1995.

(iii) The initial rental rate for a dwelling or unit as described in this paragraph in which the initial rental rate is controlled by an ordinance or charter provision in effect on January 1, 1995, may not, until January 1, 1999, exceed the amount calculated pursuant to subdivision (c) of Section 1954.53. An owner of residential real property as described in this paragraph may, until January 1, 1999, establish the initial rental rate for a dwelling or unit only where the tenant has voluntarily vacated, abandoned, or been evicted pursuant to paragraph (2) of Section 1161 of the Code of Civil Procedure.

(b) Subdivision (a) does not apply where the owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(c) Nothing in this section shall be construed to affect the authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction.

(d) This section does not apply to any dwelling or unit that contains serious health, safety, fire, or building code violations, excluding those caused by disasters, for which a citation has been issued by the appropriate governmental agency and which has remained unabated for six months or longer preceding the vacancy.

SEC. 3. Section 1962 of the Civil Code is amended to read:

1962. (a) Any owner of a dwelling structure specified in Section 1961 or a party signing a rental agreement or lease on behalf of the owner shall do all of the following:

(1) Disclose therein the name, telephone number, and usual street address at which personal service may be effected of each person who is:

(A) Authorized to manage the premises.

(B) An owner of the premises or a person who is authorized to act for and on behalf of the owner for the purpose of service of process and for the purpose of receiving and receipting for all notices and demands.

(2) Disclose therein the name, telephone number, and address of the person or entity to whom rent payments shall be made.

(A) If rent payments may be made personally, the usual days and hours that the person will be available to receive the payments shall also be disclosed.

(B) At the owner's option, the rental agreement or lease shall instead disclose the number of either:

(i) The account in a financial institution into which rent payments may be made, and the name and street address of the institution; provided that the institution is located within five miles of the rental property.

(ii) The information necessary to establish an electronic funds transfer procedure for paying the rent.

(3) Disclose therein the form or forms in which rent payments are to be made.

(4) Provide a copy of the rental agreement or lease to the tenant within 15 days of its execution by the tenant. Once each calendar year thereafter, upon request by the tenant, the owner or owner's agent shall provide an additional copy to the tenant within 15 days. If the owner or owner's agent does not possess the rental agreement or lease or a copy of it, the owner or owner's agent shall instead furnish the tenant with a written statement stating that fact and containing the information required by paragraphs (1), (2), and (3) of subdivision (a).

(b) In the case of an oral rental agreement, the owner, or a person acting on behalf of the owner for the receipt of rent or otherwise, shall furnish the tenant, within 15 days of the agreement, with a written statement containing the information required by paragraphs (1), (2), and (3) of subdivision (a). Once each calendar year thereafter, upon request by the tenant, the owner or owner's agent shall provide an additional copy of the statement to the tenant within 15 days.

(c) The information required by this section shall be kept current and this section shall extend to and be enforceable against any successor owner or manager, who shall comply with this section within 15 days of succeeding the previous owner or manager.

(d) A party who enters into a rental agreement on behalf of the owner who fails to comply with this section is deemed an agent of each person who is an owner:

(1) For the purpose of service of process and receiving and receipting for notices and demands.

(2) For the purpose of performing the obligations of the owner under law and under the rental agreement.

(3) For the purpose of receiving rental payments, which may be made in cash, by check, by money order, or in any form previously accepted by the owner or owner's agent, unless the form of payment has been specified in the oral or written agreement, or the tenant has been notified by the owner in writing that a particular form of payment is unacceptable.

(e) Nothing in this section limits or excludes the liability of any undisclosed owner.

(f) If the address provided by the owner does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed receivable by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner.

SEC. 4. Section 1962.5 of the Civil Code is amended to read:

1962.5. (a) Notwithstanding subdivisions (a) and (b) of Section 1962, the information required by paragraph (1) of subdivision (a) of Section 1962 to be disclosed to a tenant may, instead of being disclosed in the manner described in subdivisions (a) and (b) of Section 1962, be disclosed by the following method:

(1) In each dwelling structure containing an elevator a printed or typewritten notice containing the information required by paragraph (1) of subdivision (a) of Section 1962 shall be placed in every elevator and in one other conspicuous place.

(2) In each structure not containing an elevator, a printed or typewritten notice containing the information required by paragraph (1) of subdivision (a) of Section 1962 shall be placed in at least two conspicuous places.

(3) In the case of a single unit dwelling structure, the information to be disclosed under this section may be disclosed by complying with either paragraph (1) or (2).

(b) Except as provided in subdivision (a), all the provisions of Section 1962 shall be applicable.

SEC. 5. Section 1962.7 of the Civil Code is amended to read:

1962.7. In the event an owner, successor owner, manager, or agent specified in Section 1961 fails to comply with the requirements of this chapter, service of process by a tenant with respect to a dispute arising

out of the tenancy may be made by registered or certified mail sent to the address at which rent is paid, in which case the provisions of Section 1013 of the Code of Civil Procedure shall apply.

SEC. 6. Section 1161 of the Code of Civil Procedure is amended to read:

1161. A tenant of real property, for a term less than life, or the executor or administrator of his or her estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer:

1. When he or she continues in possession, in person or by subtenant, of the property, or any part thereof, after the expiration of the term for which it is let to him or her; provided the expiration is of a nondefault nature however brought about without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable; including the case where the person to be removed became the occupant of the premises as a servant, employee, agent, or licensee and the relation of master and servant, or employer and employee, or principal and agent, or licensor and licensee, has been lawfully terminated or the time fixed for occupancy by the agreement between the parties has expired; but nothing in this subdivision shall be construed as preventing the removal of the occupant in any other lawful manner; but in case of a tenancy at will, it must first be terminated by notice, as prescribed in the Civil Code.

2. When he or she continues in possession, in person or by subtenant, without the permission of his or her landlord, or the successor in estate of his or her landlord, if applicable, after default in the payment of rent, pursuant to the lease or agreement under which the property is held, and three days' notice, in writing, requiring its payment, stating the amount which is due, the name, telephone number, and address of the person to whom the rent payment shall be made, and, if payment may be made personally, the usual days and hours that person will be available to receive the payment (provided that, if the address does not allow for personal delivery, then it shall be conclusively presumed that upon the mailing of any rent or notice to the owner by the tenant to the name and address provided, the notice or rent is deemed received by the owner on the date posted, if the tenant can show proof of mailing to the name and address provided by the owner), or the number of an account in a financial institution into which the rental payment may be made, and the name and street address of the institution (provided that the institution is located within five miles of the rental property), or if an electronic funds transfer procedure has been previously established, that payment may be made pursuant to that procedure, or possession of the property, shall have been served upon him or her and if there is a subtenant in actual occupation of the premises, also upon the subtenant.

The notice may be served at any time within one year after the rent becomes due. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than 60 days after the expiration of the term without any demand of possession or notice to quit by the landlord or the successor in estate of his or her landlord, if applicable, he or she shall be deemed to be holding by permission of the landlord or successor in estate of his or her landlord, if applicable, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during that year, and the holding over for that period shall be taken and construed as a consent on the part of a tenant to hold for another year.

3. When he or she continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him or her, and if there is a subtenant in actual occupation of the premises, also, upon the subtenant. Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to the lessee or his or her subtenant, demanding the performance of the violated conditions or covenants of the lease.

A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of the premises let to a subtenant or held by a servant, employee, agent, or licensee, in case of his or her unlawful detention of the premises underlet to him or her or held by him or her.

4. Any tenant, subtenant, or executor or administrator of his or her estate heretofore qualified and now acting, or hereafter to be qualified and act, assigning or subletting or committing waste upon the demised premises, contrary to the conditions or covenants of his or her lease, or maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, thereby terminates the lease, and the landlord, or his or her successor in estate, shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter. For purposes of this subdivision, a person who illegally sells a controlled substance upon

the premises or uses the premises to further that purpose, shall be deemed to have committed a nuisance upon the premises.

5. When he or she gives written notice as provided in Section 1946 of the Civil Code of his or her intention to terminate the hiring of the real property, or makes a written offer to surrender which is accepted in writing by the landlord, but fails to deliver possession at the time specified in that written notice, without the permission of his or her landlord, or the successor in estate of the landlord, if applicable.

As used in this section, tenant includes any person who hires real property except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code.

SEC. 7. Due to the unique circumstances of the Cities of Los Angeles, Santa Monica, and West Hollywood with respect to residential real property, 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 1 of this act is necessarily applicable only to the Cities of Los Angeles, Santa Monica, and West Hollywood.

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## CHAPTER 730

An act to add Section 2249 to the Business and Professions Code, relating to health care.

[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 2249 is added to the Business and Professions Code, to read:

2249. (a) A physician and surgeon primarily responsible for providing a patient an annual gynecological examination shall provide that patient during the annual examination in layperson's language and in a language understood by the patient a standardized summary containing a description of the symptoms and appropriate methods of diagnoses for gynecological cancers. This section does not preclude the use of existing publications or pamphlets developed by nationally recognized cancer organizations or by the State Department of Health Services pursuant to Section 138.4 of the Health and Safety Code.

(b) A physician and surgeon who violates this section may be cited and assessed an administrative fine. No citation shall be issued and no fine shall be assessed upon the first complaint against a physician and

surgeon who violates this section. Upon the second and subsequent complaints against a physician or surgeon who violates this section, a citation may be issued and an administrative fine may be assessed.

(c) Notwithstanding any other provision of law, all fines collected pursuant to this section shall be credited to the Contingent Fund of the Medical Board of California to be used by the Office of Women's Health within the State Department of Health Services for outreach services that provide information to women about gynecological cancers, but shall not be expended until they are appropriated by the Legislature in the Budget Act or another statute.

(d) Section 2314 shall not apply to this section.

SEC. 2. It is the intent of the Legislature in enacting this act to ensure that women receive information on gynecological cancer as currently required by Section 109278 of the Health and Safety Code.

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## CHAPTER 731

An act to amend Section 637.5 of the Penal Code, relating to privacy.

[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 637.5 of the Penal Code is amended to read:

637.5. (a) No person who owns, controls, operates, or manages a satellite or cable television corporation, or who leases channels on a satellite or cable system shall:

(1) Use any electronic device to record, transmit, or observe any events or listen to, record, or monitor any conversations which take place inside a subscriber's residence, workplace, or place of business, without obtaining the express written consent of the subscriber. A satellite or cable television corporation may conduct electronic sweeps of subscriber households to monitor for signal quality.

(2) Provide any person with any individually identifiable information regarding any of its subscribers, including, but not limited to, the subscriber's television viewing habits, shopping choices, interests, opinions, energy uses, medical information, banking data or information, or any other personal or private information, without the subscriber's express written consent.

(b) Individual subscriber viewing responses or other individually identifiable information derived from subscribers may be retained and used by a satellite or cable television corporation only to the extent

reasonably necessary for billing purposes and internal business practices, and to monitor for unauthorized reception of services. A satellite or cable television corporation may compile, maintain, and distribute a list containing the names and addresses of its subscribers if the list contains no other individually identifiable information and if subscribers are afforded the right to elect not to be included on such a list. However, a satellite or cable television corporation shall maintain adequate safeguards to ensure the physical security and confidentiality of any such subscriber information.

(c) A satellite or cable television corporation shall not make individual subscriber information available to government agencies in the absence of legal compulsion, including, but not limited to, a court order or subpoena. If requests for such information are made, a satellite or cable television corporation shall promptly notify the subscriber of the nature of the request and what government agency has requested the information prior to responding unless otherwise prohibited from doing so by law.

Nothing in this section shall be construed to prevent local franchising authorities from obtaining information necessary to monitor franchise compliance pursuant to franchise or license agreements. This information shall be provided so as to omit individually identifiable subscriber information whenever possible. Information obtained by local franchising authorities shall be used solely for monitoring franchise compliance and shall not be subject to the California Public Records Act (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code).

(d) Any individually identifiable subscriber information gathered by a satellite or cable television corporation shall be made available for subscriber examination within 30 days of receiving a request by a subscriber to examine such information on the premises of the corporation. Upon a reasonable showing by the subscriber that the information is inaccurate, a satellite or cable television corporation shall correct such information.

(e) Upon a subscriber's application for satellite or cable television service, including, but not limited to, interactive service, a satellite or cable television corporation shall provide the applicant with a separate notice in an appropriate form explaining the subscriber's right to privacy protection afforded by this section.

(f) As used in this section:

(1) ''Cable television corporation'' shall have the same meaning as that term is given by Section 215.5 of the Public Utilities Code.

(2) ''Individually identifiable information'' means any information identifying an individual or his or her use of any service provided by a satellite or cable system other than the mere fact that such individual is

a satellite or cable television subscriber. ''Individually identifiable information'' shall not include anonymous, aggregate, or any other information that does not identify an individual subscriber of a video provider service.

(3) ''Person'' includes an individual, business association, partnership, corporation, limited liability company, or other legal entity, and an individual acting or purporting to act for or on behalf of any government, or subdivision thereof, whether federal, state, or local.

(4) ''Interactive service'' means any service offered by a satellite or cable television corporation involving the collection, reception, aggregation, storage, or use of electronic information transmitted from a subscriber to any other receiving point under the control of the satellite or cable television corporation, or vice versa.

(g) Nothing in this section shall be construed to limit the ability of a satellite or cable television corporation to market satellite or cable television or ancillary services to its subscribers.

(h) Any person receiving subscriber information from a satellite or cable television corporation shall be subject to the provisions of this section.

(i) Any aggrieved person may commence a civil action for damages for invasion of privacy against any satellite or cable television corporation, service provider, or person that leases a channel or channels on a satellite or cable television system that violates the provisions of this section.

(j) Any person who violates the provisions of this section is guilty of a misdemeanor punishable by a fine not exceeding three thousand dollars ($3,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(k) The penalties and remedies provided by subdivisions (i) and (j) are cumulative, and shall not be construed as restricting any penalty or remedy, provisional or otherwise, provided by law for the benefit of any person, and no judgment under this section shall preclude any person from obtaining additional relief based upon the same facts.

(*l*) The provisions of this section are intended to set forth minimum state standards for protecting the privacy of subscribers to cable television services and are not intended to preempt more restrictive local standards.

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.

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## CHAPTER 732

An act to add Division 1.6 (commencing with Section 4970) to the Financial Code, relating to lending.

[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. Division 1.6 (commencing with Section 4970) is added to the Financial Code, to read:

## DIVISION 1.6. ____

### CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

4970. For purposes of this division:

(a) ''Annual percentage rate'' means the annual percentage rate for the loan calculated according to the provisions of the federal Truth in Lending Act and the regulations adopted thereunder by the Federal Reserve Board.

(b) (1) ''Covered loan'' means a consumer loan in which the original principal balance of the loan does not exceed two hundred fifty thousand dollars ($250,000) in the case of a mortgage or deed of trust, and where one of the following conditions are met:

(A) For a mortgage or deed of trust, the annual percentage rate at consummation of the transaction will exceed by more than eight percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.

(B) The total points and fees payable by the consumer at or before closing for a mortgage or deed of trust will exceed 6 percent of the total loan amount.

(2) The dollar amount specified in paragraph (1) shall be adjusted every five years in accordance with the California Consumer Price Index.

(c) ''Points and fees'' shall include the following:

(1) All items required to be disclosed as finance charges under Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, including the Official Staff Commentary, as amended from time to time, except interest.

(2) All compensation and fees paid to mortgage brokers in connection with the loan transaction.

(3) All items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, only if the person originating the covered loan receives direct compensation in connection with the charge.

(d) ''Consumer loan'' means a consumer credit transaction that is secured by real property located in this state used, or intended to be used or occupied, as the principal dwelling of the consumer that is improved by a one-to-four residential unit. ''Consumer loan'' does not include a reverse mortgage, an open line of credit as defined in Part 226 of Title 12 of the Code of Federal Regulations (Regulation Z), or a consumer credit transaction that is secured by rental property or second homes. ''Consumer loan'' does not include a bridge loan with a maturity of less than one year if the purpose of the loan is a bridge loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(e) ''Original principal balance'' means the total initial amount the consumer is obligated to repay on the loan.

(f) ''Licensing agency'' shall mean the Department of Real Estate for licensed real estate brokers, the Department of Corporations for licensed residential mortgage lenders and licensed finance lenders and brokers, and the Department of Financial Institutions for commercial and industrial banks and savings associations and credit unions organized in this state.

(g) ''Licensed person'' means a real estate broker licensed under the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code), a finance lender or broker licensed under the California Finance Lenders Law (Division 9 (commencing with Section 22000)), a residential mortgage lender licensed under the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000)), a commercial or industrial bank organized under the Banking Law (Division 1 (commencing with Section 99)), a savings association organized under the Savings Association Law (Division 2 (commencing with Section 5000)), and a credit union organized under the California Credit Union Law (Division 5 (commencing with Section 14000)). Nothing in this division shall be construed to prevent any enforcement by a governmental entity against any person who originates a loan and who is exempt or excluded from licensure by all of the licensing agencies, based on a violation of any provision of this division. Nothing in this

division shall be construed to prevent the Department of Real Estate from enforcing this division against a licensed salesperson employed by a licensed real estate broker as if that salesperson were a licensed person under this division. A licensed person includes any person engaged in the practice of consumer lending, as defined in this division, for which a license is required under any other provision of law, but whose license is invalid, suspended or revoked, or where no license has been obtained.

(h) ''Originate'' means to arrange, negotiate, or make a consumer loan.

(i) ''Servicer'' has the same meaning provided in Section 6 (i)(2) of the Real Estate Settlement Procedures Act of 1974.

## CHAPTER 2. PROHIBITED ACTS

4973. The following are prohibited acts and limitations for covered loans:

(a) (1) A covered loan shall not include a prepayment fee or penalty after the first 36 months after the date of consummation of the loan.

(2) A covered loan may include a prepayment fee or penalty up to the first 36 months after the date of consummation of the loan if:

(A) The person who originates the covered loan has also offered the consumer a choice of another product without a prepayment fee or penalty.

(B) The person who originates the covered loan has disclosed in writing to the consumer at least three business days prior to loan consummation the terms of the prepayment fee or penalty to the consumer for accepting a covered loan with the prepayment penalty and the rates, points, and fees that would be available to the consumer for accepting a covered loan without a prepayment penalty.

(C) The person who originates the covered loan has limited the amount of the prepayment fee or penalty to an amount not to exceed the payment of six months' advance interest, at the contract rate of interest then in effect, on the amount prepaid in any 12-month period in excess of 20 percent of the original principal amount.

(D) A covered loan will not impose the prepayment fee or penalty if the covered loan is accelerated as a result of default.

(E) The person who originates the covered loan will not finance a prepayment penalty through a new loan that is originated by the same person.

(b) (1) A covered loan with a term of 5 years or less may not provide at origination for a payment schedule with regular periodic payments that when aggregated do not fully amortize the principal balance as of the maturity date of the loan.

(2) For a payment schedule that is adjusted to account for the seasonal or irregular income of the consumer, the total installments in any year shall not exceed the amount of one year's worth of payments on the loan. This prohibition does not apply to a bridge loan. For purposes of this paragraph, ''bridge loan'' means a loan with a maturity of less than 18 months that only requires payments of interest until the time when the entire unpaid balance is due and payable.

(c) A covered loan shall not contain a provision for negative amortization such that the payment schedule for regular monthly payments causes the principal balance to increase, unless the covered loan is a first mortgage and the licensed person discloses to the consumer that the loan contains a negative amortization provision that may add principal to the balance of the loan.

(d) A covered loan shall not include terms under which periodic payments required under the loan are consolidated and paid in advance from the loan proceeds.

(e) A covered loan shall not contain a provision that increases the interest rate as a result of a default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration for the indebtedness.

(f) (1) A person who originates covered loans shall not make or arrange a covered loan unless at the time the loan is consummated, the person reasonably believes the consumer, or consumers, when considered collectively in the case of multiple consumers, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the consumer's equity in the dwelling that secures repayment of the loan. In the case of a covered loan that is structured to increase to a specific designated rate, stated as a number or formula, at a specific predetermined date not exceeding 37 months from the date of application, this evaluation shall be based upon the fully indexed rate of the loan calculated at the time of application.

The consumer shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, do not exceed 55 percent of the consumer's monthly gross income, as verified by the credit application, the consumer's financial statement, a credit report, financial information provided to the person originating the loan by or on behalf of the consumer, or any other reasonable means.

(2) No presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that at the time the

loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, exceed 55 percent of the consumer's monthly gross income.

(3) In the case of a stated income loan, the reasonable belief requirement in paragraph (1) shall apply, however, for stated income loans that belief may be based on the income stated by the consumer, and other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection with loans of this type. A person shall not knowingly or willfully originate a covered loan as a stated income loan with the intent, or effect, of evading the provisions of this subdivision.

(g) A person who originates a covered loan shall not pay a contractor under a home-improvement contract from the proceeds of a covered loan other than by an instrument payable to the consumer or jointly to the consumer and the contractor or, at the election of the consumer, to a third-party escrow agent for the benefit of the contractor in accordance with terms and conditions established in a written escrow agreement signed by the consumer, the person who originates a covered loan, and the contractor prior to the disbursement of funds. No payments, other than progress payments for home-improvement work that the consumer certifies is completed, shall be made to an escrow account or jointly to the consumer and the contractor unless the person who originates the loan is presented with a signed and dated completion certificate by the consumer showing that the home-improvement contract was completed to the satisfaction of the consumer.

(h) It is unlawful for a person who originates a covered loan to recommend or encourage a consumer to default on an existing consumer loan or other debt in connection with the solicitation or making of a covered loan that refinances all or any portion of the existing consumer loan or debt.

(i) A covered loan shall not contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply if repayment of the loan has been accelerated in accordance with the terms of the loan documents (1) as a result of the consumer's default, (2) pursuant to a due-on-sale provision, or (3) due to fraud or material misrepresentation by a consumer in connection with the loan or the value of the security for the loan. A licensed person shall not refinance or arrange for the refinancing of a consumer loan such that the new loan is a covered loan that is made for the purpose of refinancing, debt consolidation or cash out, that does not result in an identifiable benefit to the consumer, considering the consumer's stated purpose for seeking the loan, fees, interest rates, finance charges, and points.

(j) (1) A covered loan shall not be made unless the following disclosure, written in 12-point font or larger, has been provided to the

consumer no later than three business days prior to signing of the loan documents of the transaction:

CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

Mortgage loan rates and closing costs and fees vary based on many other factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. Higher rates and fees may be justified depending on the individual circumstances of a particular consumer's application. You should shop around and compare loan rates and fees.

This particular loan may have a higher rate and total points and fees than other mortgage loans and is, or may be, subject to the additional disclosure and substantive protections under Division 1.6 (commencing with Section 4970 of the Financial Code. You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender or call the United States Department of Housing and Urban Development's counseling hotline at 1-888-466-3487 or go to www.hud.gov/fha/sfh/hcc for a list of counselors.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application.

If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors.

(2) It shall be a rebuttable presumption that a licensed person has met its obligation to provide this disclosure if the consumer provides the

licensed person with a signed acknowledgment of receipt of a copy of the notice set forth in paragraph (1).

(m) (1) A person who originates a covered loan shall not steer, counsel, or direct any prospective consumer to accept a loan product with a risk grade less favorable than the risk grade that the consumer would qualify for based on that person's then current underwriting guidelines, prudently applied, considering the information available to that person, including the information provided by the consumer.

A person shall not be deemed to have violated this section if the risk grade determination applied to a consumer is reasonably based on the person's underwriting guidelines if it is an appropriate risk grade category for which the consumer qualifies with the person.

(2) If a broker originates a covered loan, the broker shall not steer, counsel, or direct any prospective consumer to accept a loan product at a higher cost than that for which the consumer could qualify based on the loan products offered by the persons with whom the broker regularly does business.

(n) A person who originates a covered loan shall not avoid, or attempt to avoid, the application of this division by doing the following:

(1) Structuring a loan transaction as an open-end credit plan for the purpose of evading the provisions of this division when the loan would have been a covered loan if the loan had been structured as a closed end loan.

(2) Dividing any loan transaction into separate parts for the purpose of evading the provisions of this division.

(o) A person who originates a covered loan shall not act in any manner, whether specifically prohibited by this section or of a different character, that constitutes fraud.

## CHAPTER 3. ENFORCEMENT

4974. (a) Any compliance failure that was not willful or intentional and resulted from a bona fide error, that occurred notwithstanding the maintenance of procedures reasonably adopted to avoid those errors, including, but not limited to, those involving clerical, calculation, computer malfunction and programming, and printing errors shall be corrected no later than 45 days after receipt of the complaint or discovery of the error. A person who originates a covered loan shall not be administratively, civilly, or criminally liable for a bona fide error corrected pursuant to this section. An error in legal judgment is not a bona fide error under this section.

(b) If a person who originates covered loans makes a loan where the person knew of and showed reckless disregard for a violation of this division by a broker, the person and broker shall be jointly and severally

liable for all damages awarded under this division with respect to the broker's unlawful conduct.

This section does not impose or transfer liability for a breach of the broker's fiduciary duty.

4975. (a) (1) Any licensed person who violates any provision of Section 4973, 4979.6, or 4979.7 shall be deemed to have violated that person's licensing law.

(2) After any action under Section 4978.5 resulting in a conviction, the licensing agency may bring a proceeding to suspend the license of the licensed person for not less than six months and not more than three years.

(b) After any action under Section 4978.5 resulting in a second or subsequent conviction, the licensing agency may bring a proceeding to permanently revoke the license of the licensed person or impose any lesser licensed sanction for at least three years.

(c) A licensing agency may exercise any and all authority and powers available to it under any other provisions of law, to administer and enforce this division. A licensing agency may charge and collect reasonable costs for enforcing this division. However, nothing in this subdivision shall authorize the imposition or collection of charges or fees that duplicate charges or fees authorized under any other provision of law.

(d) Nothing in this section shall be construed to impair or impede a licensing agency's authority under any other provision of law.

4977. (a) A licensing agency may, after appropriate notice and opportunity for hearing, by order levy administrative penalties against a person who violates any provision of this division, and the person shall be liable for administrative penalties of not more than two thousand five hundred dollars ($2,500) for each violation. Except for licensing agencies exempt from the provisions of the Administrative Procedure Act, any hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the licensing agency shall have all the powers granted under that act.

(b) Any person who willfully and knowingly violates any provision of this division shall be liable for a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the licensing agency in any court of competent jurisdiction.

(c) A licensing agency may exercise any and all authority and powers available to it under any other provisions of law, to administer and enforce this division, including, but not limited to, investigating and examining the licensed person's books and records, and charging and

collecting the reasonable costs for these activities. The licensing agency shall not charge a licensed person twice for the same service. Any civil, criminal, and administrative authority and remedies available to the licensing agency pursuant to its licensing law may be sought and employed in any combination deemed advisable by the licensing agency to enforce the provisions of this division.

(d) If the licensing agency determines that it is in the public interest, the licensing agency may include, in any action for penalties authorized by subdivision (b), a claim for relief in addition to the penalties, including a claim for restitution or disgorgement, and the court shall have jurisdiction to award the additional relief.

(e) Nothing in this section shall be construed to impair or impede the Attorney General from representing a licensing agency in bringing an action to enforce this division at the request and on behalf of the licensing agency.

(f) In any action brought by the licensing agency, or the Attorney General acting at the request and at the behest of the licensing agency, under this division in which a judgment against a person is rendered, the licensing agency or the Attorney General shall be entitled to recover costs which, in the discretion of the court, may include an amount representing reasonable attorney's fees and investigative expenses for services rendered for deposit in the appropriate fund of that licensing agency.

(g) The amounts collected under subdivisions (a) and (b) shall be deposited in the appropriate fund of the licensing agency to be used by that licensing agency, subject to appropriation by the Legislature, for the purposes of education and enforcement in connection with abusive lending practices.

4978. (a) A person who fails to comply with the provisions of this division is civilly liable to the consumer in an amount equal to any actual damages suffered by the consumer, plus attorneys fees and costs. For a willful and knowing violation of this division, the person shall be liable to the consumer in the amount of fifteen thousand dollars ($15,000) or the consumers actual damages, whichever is greater, plus attorneys fees and costs.

(b) A provision in a covered loan that violates this division is unenforceable. A court in which any action is brought by, or on behalf of, an aggrieved consumer for relief may issue an order or injunction to reform the terms of the covered loan to conform to the provisions of this division. The court may, in addition to any other remedy, award punitive damages to the consumer upon a finding that such damages are warranted pursuant to Section 3294 of the Civil Code.

(c) Nothing in this section is intended, nor shall be construed, to abrogate existing common law provisions prohibiting double recovery of damages.

4978.6. A person who originates covered loans shall inform any employee, who originates covered loans on behalf of the person, of the administrative, civil, and criminal penalties for a violation of this division.

4979. Upon request, a person who originates a covered loan shall provide the licensing agency or the consumer, at no cost, documentation regarding his or her loan that clearly demonstrates whether any loan is a covered loan. This documentation shall include, but not be limited to, full disclosure of the original principal balance, the annual percentage rate, and the total points and fees, as defined in Section 4971.

4979.5. (a) A person who provides brokerage services to a borrower in a covered loan transaction by soliciting lenders or otherwise negotiating a consumer loan secured by real property, is the fiduciary of the consumer, and any violation of the person's fiduciary duties shall be a violation of this section. A broker who arranges a covered loan owes this fiduciary duty to the consumer regardless of who else the broker may be acting as an agent for in the course of the loan transaction.

(b) Except for a broker or a person who provides brokerage services, no licensed person or subsequent assignee shall have administrative, civil, or criminal liability for a violation of this section.

4979.6. A person who originates a covered loan shall not make a covered loan that finances points and fees in excess of one thousand dollars ($1,000) or 6 percent of the original principal balance, exclusive of points and fees, whichever is greater.

4979.7. On and after July 1, 2002, a person who originates a consumer loan shall not finance, directly or indirectly, into a consumer loan transaction or finance to the same borrower within 30 days of a consumer loan transaction any credit life, credit disability, credit property, or credit unemployment insurance premiums, or any debt cancellation or suspension agreement or contract fees, provided that insurance premiums, debt cancellation, or suspension fees calculated and paid on a monthly basis shall not be considered financed by the person originating the loan. For purposes of this section, credit insurance does not include a contract issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a mortgagor's default.

4979.8. The provisions of this division shall not impose liability on an assignee that is a holder in due course. The provisions of this division shall not apply to persons chartered by Congress to engage in secondary mortgage market transactions.

SEC. 3. The provisions of this act shall apply to a consumer loan applied for on or after July 1, 2002.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 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.

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## CHAPTER 733

An act to amend Sections 4970, 4973, 4974, 4975, 4977, 4978, 4978.6, 4979, and 4979.7 of the Financial Code, as added by Assembly Bill 489 of the 2001-02 Regular Session, relating to lending.

[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 4970 of the Financial Code, as added by Assembly Bill 489 of the 2001–02 Regular Session, is amended to read:

4970. For purposes of this division:

(a) ''Annual percentage rate'' means the annual percentage rate for the loan calculated according to the provisions of the federal Truth in Lending Act and the regulations adopted thereunder by the Federal Reserve Board.

(b) (1) ''Covered loan'' means a consumer loan in which the original principal balance of the loan does not exceed two hundred fifty thousand dollars ($250,000) in the case of a mortgage or deed of trust, and where one of the following conditions are met:

(A) For a mortgage or deed of trust, the annual percentage rate at consummation of the transaction will exceed by more than eight percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.

(B) The total points and fees payable by the consumer at or before closing for a mortgage or deed of trust will exceed 6 percent of the total loan amount.

(2) The dollar amount specified in paragraph (1) shall be adjusted every five years in accordance with the California Consumer Price Index.

(c) ''Points and fees'' shall include the following:

(1) All items required to be disclosed as finance charges under Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, including the Official Staff Commentary, as amended from time to time, except interest.

(2) All compensation and fees paid to mortgage brokers in connection with the loan transaction.

(3) All items listed in Section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, only if the person originating the covered loan receives direct compensation in connection with the charge.

(d) ''Consumer loan'' means a consumer credit transaction that is secured by real property located in this state used, or intended to be used or occupied, as the principal dwelling of the consumer that is improved by a one-to-four residential unit. ''Consumer loan'' does not include a reverse mortgage, an open line of credit as defined in Part 226 of Title 12 of the Code of Federal Regulations (Regulation Z), or a consumer credit transaction that is secured by rental property or second homes. ''Consumer loan'' does not include a bridge loan. For purposes of this division, a bridge loan is any temporary loan, having a maturity of one year or less, for the purpose of acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(e) ''Original principal balance'' means the total initial amount the consumer is obligated to repay on the loan.

(f) ''Licensing agency'' shall mean the Department of Real Estate for licensed real estate brokers, the Department of Corporations for licensed residential mortgage lenders and licensed finance lenders and brokers, and the Department of Financial Institutions for commercial and industrial banks and savings associations and credit unions organized in this state.

(g) ''Licensed person'' means a real estate broker licensed under the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code), a finance lender or broker licensed under the California Finance Lenders Law (Division 9 (commencing with Section 22000)), a residential mortgage lender licensed under the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000)), a commercial or industrial bank organized under the Banking Law (Division 1 (commencing with Section 99)), a savings association organized under

the Savings Association Law (Division 2 (commencing with Section 5000)), and a credit union organized under the California Credit Union Law (Division 5 (commencing with Section 14000)). Nothing in this division shall be construed to prevent any enforcement by a governmental entity against any person who originates a loan and who is exempt or excluded from licensure by all of the licensing agencies, based on a violation of any provision of this division. Nothing in this division shall be construed to prevent the Department of Real Estate from enforcing this division against a licensed salesperson employed by a licensed real estate broker as if that salesperson were a licensed person under this division. A licensed person includes any person engaged in the practice of consumer lending, as defined in this division, for which a license is required under any other provision of law, but whose license is invalid, suspended or revoked, or where no license has been obtained.

(h) ''Originate'' means to arrange, negotiate, or make a consumer loan.

(i) ''Servicer'' has the same meaning provided in Section 6 (i)(2) of the Real Estate Settlement Procedures Act of 1974.

SEC. 2. Section 4973 of the Financial Code, as added by Assembly Bill 489 of the 2001–02 Regular Session, is amended to read:

4973. The following are prohibited acts and limitations for covered loans:

(a) (1) A covered loan shall not include a prepayment fee or penalty after the first 36 months after the date of consummation of the loan.

(2) A covered loan may include a prepayment fee or penalty up to the first 36 months after the date of consummation of the loan if:

(A) The person who originates the covered loan has also offered the consumer a choice of another product without a prepayment fee or penalty.

(B) The person who originates the covered loan has disclosed in writing to the consumer at least three business days prior to loan consummation the terms of the prepayment fee or penalty to the consumer for accepting a covered loan with the prepayment penalty and the rates, points, and fees that would be available to the consumer for accepting a covered loan without a prepayment penalty.

(C) The person who originates the covered loan has limited the amount of the prepayment fee or penalty to an amount not to exceed the payment of six months' advance interest, at the contract rate of interest then in effect, on the amount prepaid in any 12-month period in excess of 20 percent of the original principal amount.

(D) A covered loan will not impose the prepayment fee or penalty if the covered loan is accelerated as a result of default.

(E) The person who originates the covered loan will not finance a prepayment penalty through a new loan that is originated by the same person.

(b) (1) A covered loan with a term of 5 years or less may not provide at origination for a payment schedule with regular periodic payments that when aggregated do not fully amortize the principal balance as of the maturity date of the loan.

(2) For a payment schedule that is adjusted to account for the seasonal or irregular income of the consumer, the total installments in any year shall not exceed the amount of one year's worth of payments on the loan. This prohibition does not apply to a bridge loan. For purposes of this paragraph, ''bridge loan'' means a loan with a maturity of less than 18 months that only requires payments of interest until the time when the entire unpaid balance is due and payable.

(c) A covered loan shall not contain a provision for negative amortization such that the payment schedule for regular monthly payments causes the principal balance to increase, unless the covered loan is a first mortgage and the person who originates the loan discloses to the consumer that the loan contains a negative amortization provision that may add principal to the balance of the loan.

(d) A covered loan shall not include terms under which periodic payments required under the loan are consolidated and paid in advance from the loan proceeds.

(e) A covered loan shall not contain a provision that increases the interest rate as a result of a default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration for the indebtedness.

(f) (1) A person who originates covered loans shall not make or arrange a covered loan unless at the time the loan is consummated, the person reasonably believes the consumer, or consumers, when considered collectively in the case of multiple consumers, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the consumer's equity in the dwelling that secures repayment of the loan. In the case of a covered loan that is structured to increase to a specific designated rate, stated as a number or formula, at a specific predetermined date not exceeding 37 months from the date of application, this evaluation shall be based upon the fully indexed rate of the loan calculated at the time of application.

The consumer shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated,

the consumer's total monthly debts, including amounts owed under the loan, do not exceed 55 percent of the consumer's monthly gross income, as verified by the credit application, the consumer's financial statement, a credit report, financial information provided to the person originating the loan by or on behalf of the consumer, or any other reasonable means.

(2) No presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, exceed 55 percent of the consumer's monthly gross income.

(3) In the case of a stated income loan, the reasonable belief requirement in paragraph (1) shall apply, however, for stated income loans that belief may be based on the income stated by the consumer, and other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection with loans of this type. A person shall not knowingly or willfully originate a covered loan as a stated income loan with the intent, or effect, of evading the provisions of this subdivision.

(g) A person who originates a covered loan shall not pay a contractor under a home-improvement contract from the proceeds of a covered loan other than by an instrument payable to the consumer or jointly to the consumer and the contractor or, at the election of the consumer, to a third-party escrow agent for the benefit of the contractor in accordance with terms and conditions established in a written escrow agreement signed by the consumer, the person who originates a covered loan, and the contractor prior to the disbursement of funds. No payments, other than progress payments for home-improvement work that the consumer certifies is completed, shall be made to an escrow account or jointly to the consumer and the contractor unless the person who originates the loan is presented with a signed and dated completion certificate by the consumer showing that the home-improvement contract was completed to the satisfaction of the consumer.

(h) It is unlawful for a person who originates a covered loan to recommend or encourage a consumer to default on an existing consumer loan or other debt in connection with the solicitation or making of a covered loan that refinances all or any portion of the existing consumer loan or debt.

(i) A covered loan shall not contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply if repayment of the loan has been accelerated in accordance with the terms of the loan documents (1) as a result of the consumer's default, (2) pursuant to a due-on-sale provision, or (3) due to fraud or material misrepresentation by a consumer in connection with the loan or the value of the security for the loan.

(j) A person who originates a covered loan shall not refinance or arrange for the refinancing of a consumer loan such that the new loan is a covered loan that is made for the purpose of refinancing, debt consolidation or cash out, that does not result in an identifiable benefit to the consumer, considering the consumer's stated purpose for seeking the loan, fees, interest rates, finance charges, and points.

(k) (1) A covered loan shall not be made unless the following disclosure, written in 12-point font or larger, has been provided to the consumer no later than three business days prior to signing of the loan documents of the transaction:

CONSUMER CAUTION AND HOME OWNERSHIP
COUNSELING NOTICE

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

Mortgage loan rates and closing costs and fees vary based on many other factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. Higher rates and fees may be justified depending on the individual circumstances of a particular consumer's application. You should shop around and compare loan rates and fees.

This particular loan may have a higher rate and total points and fees than other mortgage loans and is, or may be, subject to the additional disclosure and substantive protections under Division 1.6 (commencing with Section 4970 of the Financial Code. You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender or call the United States Department of Housing and Urban Development's counseling hotline at 1-888-466-3487 or go to www.hud.gov/fha/sfh/hcc for a list of counselors.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application.

If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors.

(2) It shall be a rebuttable presumption that a licensed person has met its obligation to provide this disclosure if the consumer provides the licensed person with a signed acknowledgment of receipt of a copy of the notice set forth in paragraph (1).

(*l*) (1) A person who originates a covered loan shall not steer, counsel, or direct any prospective consumer to accept a loan product with a risk grade less favorable than the risk grade that the consumer would qualify for based on that person's then current underwriting guidelines, prudently applied, considering the information available to that person, including the information provided by the consumer.

A person shall not be deemed to have violated this section if the risk grade determination applied to a consumer is reasonably based on the person's underwriting guidelines if it is an appropriate risk grade category for which the consumer qualifies with the person.

(2) If a broker originates a covered loan, the broker shall not steer, counsel, or direct any prospective consumer to accept a loan product at a higher cost than that for which the consumer could qualify based on the loan products offered by the persons with whom the broker regularly does business.

(m) A person who originates a covered loan shall not avoid, or attempt to avoid, the application of this division by doing the following:

(1) Structuring a loan transaction as an open-end credit plan for the purpose of evading the provisions of this division when the loan would have been a covered loan if the loan had been structured as a closed end loan.

(2) Dividing any loan transaction into separate parts for the purpose of evading the provisions of this division.

(n) A person who originates a covered loan shall not act in any manner, whether specifically prohibited by this section or of a different character, that constitutes fraud.

SEC. 3. Section 4974 of the Financial Code, as added by Assembly Bill 489 of the 2001–02 Regular Session, is amended to read:

4974. (a) Any compliance failure that was not willful or intentional and resulted from a bona fide error, that occurred notwithstanding the maintenance of procedures reasonably adopted to avoid those errors, including, but not limited to, those involving clerical, calculation, computer malfunction and programming, and printing errors shall be corrected no later than 45 days after receipt of the complaint or discovery

of the error. A person who originates a covered loan shall not be administratively, civilly, or criminally liable for a bona fide error corrected pursuant to this section.

(b) If a person who originates covered loans makes a loan where the person knew of and showed reckless disregard for a violation of this division by a broker, the person and broker shall be jointly and severally liable for all damages awarded under this division with respect to the broker's unlawful conduct.

This section does not impose or transfer liability for a breach of the broker's fiduciary duty.

SEC. 4. Section 4975 of the Financial Code, as added by Assembly Bill 489 of the 2001–02 Regular Session, is amended to read:

4975. (a) (1) Any licensed person who violates any provision of Section 4973, 4979.6, or 4979.7 shall be deemed to have violated that person's licensing law.

(2) After a knowing and willful violation, the licensing agency may bring a proceeding to suspend the license of the licensed person for not less than six months and not more than three years.

(b) After a knowing and willful violation resulting in a second or subsequent administrative or civil action, the licensing agency may bring a proceeding to permanently revoke the license of the licensed person or impose any lesser licensed sanction for at least three years.

(c) A licensing agency may exercise any and all authority and powers available to it under any other provisions of law, to administer and enforce this division including, but not limited to, investigating and examining the licensed person's books and records, and charging and collecting the reasonable costs for these activities. The licensing agency shall not charge a licensed person twice for the same service. Any civil, criminal, and administrative authority and remedies available to the licensing agency pursuant to its licensing law may be sought and employed in any combination deemed advisable by the licensing agency to enforce the provisions of this division.

(d) Nothing in this section shall be construed to impair or impede a licensing agency's authority under any other provision of law.

SEC. 5. Section 4977 of the Financial Code, as added by Assembly Bill 489 of the 2001–02 Regular Session, is amended to read:

4977. (a) A licensing agency may, after appropriate notice and opportunity for hearing, by order levy administrative penalties against a person who violates any provision of this division, and the person shall be liable for administrative penalties of not more than two thousand five hundred dollars ($2,500) for each violation. Except for licensing agencies exempt from the provisions of the Administrative Procedure Act, any hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1

of Division 3 of Title 2 of the Government Code), and the licensing agency shall have all the powers granted under that act.

(b) Any person who willfully and knowingly violates any provision of this division shall be liable for a civil penalty of not more than twenty-five thousand dollars ($25,000) for each violation which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the licensing agency in any court of competent jurisdiction.

(c) Nothing in this section requires exhaustion of administrative remedies prior to an injured party bringing a civil action.

(d) If the licensing agency determines that it is in the public interest, the licensing agency may include, in any action for penalties authorized by subdivision (b), a claim for relief in addition to the penalties, including a claim for restitution or disgorgement, and the court shall have jurisdiction to award the additional relief.

(e) Nothing in this section shall be construed to impair or impede the Attorney General from representing a licensing agency in bringing an action to enforce this division at the request and on behalf of the licensing agency.

(f) In any action brought by the licensing agency, or the Attorney General acting at the request and on behalf of the licensing agency, under this division in which a judgment against a person is rendered, the licensing agency or the Attorney General shall be entitled to recover costs which, in the discretion of the court, may include an amount representing reasonable attorney's fees and investigative expenses for services rendered for deposit in the appropriate fund of that licensing agency.

(g) The amounts collected under subdivisions (a) and (b) shall be deposited in the appropriate fund of the licensing agency to be used by that licensing agency, subject to appropriation by the Legislature, for the purposes of education and enforcement in connection with abusive lending practices.

SEC. 6. Section 4978 of the Financial Code, as added by Assembly Bill 489 of the 2001–02 Regular Session, is amended to read:

4978. (a) A person who fails to comply with the provisions of this division is civilly liable to the consumer in an amount equal to any actual damages suffered by the consumer, plus attorneys fees and costs. For a willful and knowing violation of this division, the person shall be liable to the consumer in the amount of fifteen thousand dollars ($15,000) or the consumers actual damages, whichever is greater, plus attorneys fees and costs.

(b) (1) If a provision in a contract in a covered loan violates subdivision (a), (b), (c), (d), (e), or (i) of Section 4973, Section 4979.6, or Section 4979.7, that provision is unenforceable. A court in which any

action is brought by, or on behalf of, an aggrieved consumer for relief may issue an order or injunction to reform the terms of the covered loan to conform to the provisions of this division.

(2) A court may, in addition to any other remedy, award punitive damages to the consumer upon a finding that such damages are warranted pursuant to Section 3294 of the Civil Code.

(c) Nothing in this section is intended, nor shall be construed, to abrogate existing common law provisions prohibiting double recovery of damages.

SEC. 7. Section 4978.6 of the Financial Code, as added by Assembly Bill 489 of the 2001–02 Regular Session, is amended to read:

4978.6. A person who originates covered loans shall inform any employee, who originates covered loans on behalf of the person, of the administrative or civil penalties for a violation of this division.

SEC. 8. Section 4979 of the Financial Code, as added by Assembly Bill 489 of the 2001–02 Regular Session, is amended to read:

4979. Upon request, a person who originates a covered loan shall provide the licensing agency or the consumer, at no cost, documentation regarding his or her loan that clearly demonstrates whether any loan is a covered loan. This documentation shall include, but not be limited to, full disclosure of the original principal balance, the annual percentage rate, and the total points and fees, as defined in Section 4970.

SEC. 9. Section 4979.7 of the Financial Code, as added by Assembly Bill 489 of the 2001–02 Regular Session, is amended to read:

4979.7. On or after July 1, 2002, a person who originates a consumer loan shall not finance, directly or indirectly, into a consumer loan or finance to the same borrower within 30 days of a consumer loan any credit life, credit disability, credit property, or credit unemployment insurance premiums, or any debt cancellation or suspension agreement fees, provided that credit insurance premiums, debt cancellation, or suspension fees calculated and paid on a monthly basis shall not be considered financed by the person originating the loan. For purposes of this section, credit insurance does not include a contract issued by a government agency or private mortgage insurance company to insure the lender against loss caused by a mortgagor's default.

SEC. 10. All of the sections amended by this act shall apply only to a covered loan for which an application is made on or after July 1, 2002.

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## CHAPTER 734

An act to amend Sections 8208, 8264.5, 8278.3, 8951, 10901, 11023, 11024.5, 17070.75, 17150, 17582, 17584, 22303.5, 32228, 32228.1,

33533, 37220.6, 41374, 41409, 42238.44, 42239.15, 42650, 42850, 44503, 47773, 48264.5, 51210, 51220, 51224.5, 51511, 51810, 51874, 52066, 52067, 52334, 52523, 52761, 53029, 54746, 54749, 56026, 56029, 56200, 56207, 56366.1, 56391, 56836.02, 60061, 60240, 60313, 60400, 63051, 69995, 69996, 69997, 69998, 78300, 89230, and 99223 of, to amend and renumber the heading of Chapter 17 (commencing with 53081) of Part 28 of, to amend and renumber Sections 53081, 53082, 53083, and 53084 of, to add Sections 44395.5, 47661.5, and 54746.5 to, to add Article 3.7 (commencing with Section 56055) to Chapter 1 of Part 30 of, to repeal Section 56044 of, and to repeal Article 19 (commencing with Section 8420) and Article 19.5 (commencing with Section 8430) of Chapter 2 of Part 6 of, the Education Code, and to amend Sections 3540.2, 4420.5, 6516.6, and 8869.84 of the Government Code, to amend Section 3 of Chapter 1024 of the Statutes of 2000, and to amend Items 6110-001-0890, 6110-165-0001, 6110-210-0001, 6110-295-0001, and 6110-485 of Section 2.00 of the Budget Act of 2001, relating to education, making an appropriation therefor, 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 8208 of the Education Code is amended to read:

8208. As used in this chapter:

(a) ''Alternative payments'' includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services.

(b) ''Alternative payment program'' means a local government agency or nonprofit organization that has contracted with the department pursuant to Section 8220.2 to provide alternative payments and to provide support services to parents and providers.

(c) ''Applicant or contracting agency'' means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private nontax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(d) ''Assigned reimbursement rate'' is that rate established by the contract with the agency and is derived by dividing the total dollar amount of the contract by the minimum child day of average daily enrollment level of service required.

(e) ''Attendance'' means the number of children present at a child care and development facility. ''Attendance,'' for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(f) ''Capital outlay'' means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(g) ''Caregiver'' means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(h) ''Child care and development facility'' means any residence or building or part thereof in which child care and development services are provided.

(i) ''Child care and development programs'' means those programs that offer a full range of services for children from infancy to 14 years of age, for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

(1) Campus child care and development.

(2) General child care and development.

(3) Intergenerational child care and development.

(4) Migrant worker child care and development.

(5) Child care provided by the California School Age Families Education Program (Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29.

(6) State preschool.

(7) Resource and referral.

(8) Severely handicapped.

(9) Family day care.

(10) Alternative payment.

(11) Child abuse protection and prevention services.

(12) Schoolage community child care.

(j) ''Child care and development services'' means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may

include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements.

(k) ''Children at risk of abuse, neglect, or exploitation'' means children who are so identified in a written referral from a legal, medical, or social service agency, or emergency shelter.

(*l*) ''Children with exceptional needs'' means children who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000), and meeting eligibility criteria described in Section 56026 and Sections 56333 to 56338, inclusive, and Sections 3030 and 3031 of Title 5 of the California Code of Regulations. These children have an active individualized education program, and are receiving appropriate special education and services, unless they are under three years of age and permissive special education programs are available. These children may be developmentally disabled, hard-of-hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, or children with specific learning disabilities, who require the special attention of adults in a child care setting.

(m) ''Children with special needs'' includes infants and toddlers under the age of three years; limited-English-speaking-proficient children; children with exceptional needs; limited-English-proficient handicapped children; and children at risk of neglect, abuse, or exploitation.

(n) ''Closedown costs'' means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(o) ''Cost'' includes, but is not limited to, expenditures that are related to the operation of child care and development programs. ''Cost'' may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs. ''Cost'' may also include amounts for licensable facilities in the community served by the program, including lease payments or depreciation, down payments, and payments of principal and interest on loans incurred to acquire, rehabilitate, or construct licensable facilities, but these costs shall not exceed fair market rents existing in the community in which the facility is located. ''Reasonable and necessary costs'' are costs that, in nature and amount, do not exceed what an ordinary prudent person would incur in the conduct of a competitive business.

(p) ''Elementary school,'' as contained in Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958,

Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the cancellation provisions of loans to students in institutions of higher learning.

(q) ''Health services'' include, but are not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(r) ''Higher educational institutions'' means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(s) ''Intergenerational staff'' means persons of various generations.

(t) ''Limited-English-speaking-proficient and non-English-speaking-proficient children'' means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(u) ''Parent'' means any person living with a child who has responsibility for the care and welfare of the child.

(v) ''Program director'' means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.

(w) ''Proprietary child care agency'' means an organization or facility providing child care, which is operated for profit.

(x) ''Resource and referral programs'' means programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance

for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(y) ''Severely handicapped children'' are children who require instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbance, or severe developmental disability. These children, ages birth to 21 years, inclusive, may be assessed by public school special education staff, regional center staff, or another appropriately licensed clinical professional.

(z) ''Short-term respite child care'' means child care service to assist families whose children have been identified through written referral from a legal, medical, or social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child's own home.

(aa) (1) ''Site supervisor'' means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of a child care and development program operating in a single site. The Superintendent of Public Instruction may waive the requirements of this subdivision if the superintendent determines that the existence of compelling need is appropriately documented.

(2) In respect to state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both Section 8244 and subdivision (e) of Section 8360.1 is also qualified under this subdivision.

(ab) ''Standard reimbursement rate'' means that rate established by the Superintendent of Public Instruction pursuant to Section 8265.

(ac) ''Startup costs'' means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(ad) ''State preschool services'' means part-day educational programs for low-income or otherwise disadvantaged prekindergarten-age children.

(ae) ''Support services'' means those services which, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent

training, provider and staff training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(af) ''Teacher'' means a person with the appropriate permit issued by the Commission on Teacher Credentialing who provides program supervision and instruction which includes supervision of a number of aides, volunteers, and groups of children.

(ag) ''Underserved area'' means a county or subcounty area, including, but not limited to, school districts, census tracts, or ZIP Code areas, where the ratio of publicly subsidized child care and development program services to the need for these services is low, as determined by the Superintendent of Public Instruction.

(ah) ''Workday'' means the time that the parent requires temporary care for a child for any of the following reasons:

(1) To undertake training in preparation for a job.

(2) To undertake or retain a job.

(3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

SEC. 2. Section 8264.5 of the Education Code is amended to read:

8264.5. The Superintendent of Public Instruction may waive or modify child development requirements in order to enable child development programs to serve combinations of eligible children in areas of low population. The child development programs for which the superintendent may grant waivers shall include, but need not be limited to, state preschool programs, child care provided by the California School Age Families Education Program (Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29), infant care and development services, migrant child care and development programs, campus child care and development programs, and general child care and development programs.

SEC. 3. Section 8278.3 of the Education Code is amended to read:

8278.3. (a) (1) The Child Care Facilities Revolving Fund is hereby established in the State Treasury to provide funding for the purchase of new relocatable child care facilities for lease to school districts and contracting agencies who provide child care and development services, pursuant to this chapter. The Superintendent of Public Instruction may transfer state funds appropriated for child care facilities into this fund for allocation to school districts and contracting agencies, as specified, for the purchase, transportation, and installation of facilities for replacement and expansion of capacity. School districts and contracting agencies using facilities made available by the use of these funds shall be charged a leasing fee, either at a fair market value for those facilities or at an

amount sufficient to amortize the cost of purchase and relocation, whichever is lower, over a 10-year period. Upon full repayment of the purchase and relocation costs, title shall transfer from the State of California to the school district or contracting agency. The Superintendent of Public Instruction shall deposit all revenue derived from the lease payments into the Child Care Facilities Revolving Fund.

(2) The Child Care Facilities Revolving Fund may provide for the renovation, repair, or improvement of an existing building, owed by the contracting agency, to expand child care and development services pursuant to this chapter. School districts and the contracting agencies using facilities renovated, repaired, or improved by the use of these funds shall repay the loan in an amount to fully amortize the cost of renovation, repair, or improvement over a period not to exceed 10 years. Agencies receiving a revolving fund loan shall obtain, at their own expense, a title search, title and liability insurance, plans, permits, inspections, and a bond to protect the state's interest until the loan is fully repaid. If the contract for child care and development services is terminated or nonrenewed, the remaining amount on the loan shall be repaid in full by the contractor or the bond shall be forfeited. The Superintendent of Public Instruction shall deposit all revenue derived loan payments into the Child Care Facilities Revolving Fund.

(3) Notwithstanding Section 13340 of the Government Code, all moneys in the fund, including moneys deposited from lease payments, shall be continuously appropriated, without regard to fiscal year, to the Superintendent of Public Instruction for expenditure pursuant to this article.

(b) On or before August 1, 1998, and on or before August 1 of each fiscal year thereafter, the Superintendent of Public Instruction shall submit to the Office of the Secretary for Education, the Department of Finance, and the Legislative Analyst's Office a report detailing the number of funding requests received and their purpose, the types of agencies which received this facilities funding, the increased capacity that these facilities generated, a description of how the facilities are being used, and a projection of the lease payments collected and the funds available for future use.

(c) School districts and county offices of education that operate a Cal-SAFE program pursuant to Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29 are eligible to apply for and receive funding pursuant to this section.

SEC. 4. Article 19 (commencing with Section 8420) of Chapter 2 of Part 6 of the Education Code is repealed.

SEC. 5. Article 19.5 (commencing with Section 8430) of Chapter 2 of Part 6 of the Education Code is repealed.

SEC. 6. Section 8951 of the Education Code is amended to read:

8951. As used in this chapter, ''arts'' includes, but is not limited to, all of the following: dance; theatre; music; folk art; creative writing; visual arts, including painting, sculpture, photography, and craft arts; design, including graphic arts, computer graphics, and costume design; film; and video.

SEC. 7. Section 10901 of the Education Code is amended to read:

10901. The following terms, wherever used or referred to in this chapter have the following meanings, respectively, unless a different meaning clearly appears from the context:

(a) ''Public authority'' means any city of any class, city and county, county of any class, public corporation or district having powers to provide recreation, or school district in the state.

(b) ''Governing body'' means, in the case of a city, the city council, municipal council, or common council; in the case of a county or city and county, the board of supervisors; in the case of a public corporation or district, the governing board of the public corporation or district; and in the case of a school district, the governing board of the school district.

(c) ''Recreation'' means any activity, voluntarily engaged in, which contributes to the physical, mental, or moral development of the individual or group participating therein, and includes any activity in the fields of visual and performing arts, handicraft, science, literature, nature study, nature contacting, aquatic sports, and athletics, or any of them, and any informal play incorporating any such activity.

(d) ''Community recreation'' and ''public recreation'' mean the recreation as may be engaged in under direct control of a public authority, or any camping or outdoor recreation activity which is (1) sponsored by a nonprofit organization, (2) for the benefit of disadvantaged or handicapped schoolage children, and (3) in a county with a population less than or equal to 45,000 according to the most recent federal census.

(e) ''Nonprofit organization'' means those nonprofit organizations which, as determined by the governing board of the school district, are unable to pay for the private transportation of disadvantaged or handicapped schoolage children to recreation activities.

(f) ''Recreation center'' means a place, structure, area, or other facility under the jurisdiction of a governing body of a public authority used for community recreation whether or not it may be used primarily for other purposes, playgrounds, playing fields or courts, beaches, lakes, rivers, swimming pools, gymnasiums, auditoriums, libraries, parks adjacent to school sites, recreational community gardens, rooms for arts and crafts, camps, and meeting places.

Playgrounds, outdoor playing fields or courts, swimming pools, and camps, with necessary equipment and appurtenances for their operation, under the jurisdiction of a governing board of a public authority used for

community recreation shall be considered recreation centers within the meaning of this chapter whether or not they may be used primarily for other purposes.

SEC. 8. Section 11023 of the Education Code is amended to read:

11023. The Superintendent of Public Instruction, shall recommend, and the State Board of Education shall approve, a plan for the comprehensive evaluation of the program authorized in this chapter. The Superintendent of Public Instruction shall complete the evaluation and submit it to the State Board of Education by July 1, 2004. The State Board of Education shall submit the final evaluation and report to the Legislature by December 31, 2004, on all of the following:

(a) Changes in the number and percent of pupils who took nationally-normed, standardized tests used for college admission decisions.

(b) Changes in the school-wide average score on nationally-normed, standardized tests used for college admission decisions.

(c) Changes in the number and percentage of pupils who complete the A-F or college preparatory course requirements with at least a ''C'' grade.

(d) Changes in the number and percentage of pupils who complete advanced placement courses and received a score of ''3'' or above.

(e) Changes in the number of advanced placement courses taken by pupils.

(f) Changes in the number and percentage of parents or guardians of 8th grade pupils who were notified of the course requirements that are a prerequisite for admission to the California State University or the University of California.

(g) The college participation rates at qualifying schools before and after the implementation of program activities pursuant to this chapter.

(h) Recommendations for changes to this chapter that could further increase the percentage of high school pupils eligible for admission to the California State University or the University of California upon graduation from high school.

SEC. 9. Section 11024.5 of the Education Code is amended to read:

11024.5. This chapter shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 10. Section 17070.75 of the Education Code is amended to read:

17070.75. (a) The board shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.

(b) In order to ensure compliance with subdivision (a) and to encourage school districts to maintain all buildings under their control, the board shall require an applicant school district to do all of the following prior to the approval of a project:

(1) Establish a restricted account within the school district's general fund for the exclusive purpose of providing moneys for ongoing and major maintenance of school buildings, according the highest priority to funding for the purposes set forth in subdivision (a).

(2) Agree to deposit into the account established pursuant to paragraph (1), in each fiscal year for 20 years after receipt of funds under this chapter, a minimum amount equal to or greater than 3 percent of the applicant school district's total general fund expenditures, including other financing uses, for that fiscal year. For the 1998–99 fiscal year and the 1999–2000 fiscal year, a school district may phase in this requirement by agreeing to certify the deposit of no less than 2 percent for the 1998–99 fiscal year and no less than $2^1/_2$ percent for the 1999–2000 fiscal year. Annual deposits to the fund established pursuant to paragraph (1) in excess of $2^1/_2$ percent of the district general fund budget may count towards the district's matching funds requirement necessary to receive apportionments from the State School Deferred Maintenance Fund pursuant to Section 17584 to the extent that funds are used for purposes that qualify for funding under that section. In addition, any district contribution to this fund may be provided in lieu of meeting the ongoing maintenance requirements pursuant to Section 17014 to the extent the funds are used for purposes established in that section. A school district that serves as the administrative unit for a special education local plan area may elect to exclude from its total general fund expenditures, for purposes of this paragraph, the distribution of revenues that are passed through to participating members of the special education local plan area. This paragraph is applicable only to the following school districts:

(A) High school districts with an average daily attendance greater than 300 pupils.

(B) Elementary school districts with an average daily attendance greater than 900 pupils.

(C) Unified school districts with an average daily attendance greater than 1,200 pupils.

(3) Certify that it has publicly approved an ongoing and major maintenance plan that outlines the use of the funds deposited, or to be deposited, pursuant to paragraph (2). The plan may provide that the district need not expend all of its annual allocation for ongoing and major maintenance in the year in which it is deposited if the cost of major maintenance requires that the allocation be carried over into another fiscal year. However, any state funds carried over into a subsequent year

shall not be counted toward the annual minimum contribution by the district. A plan developed in compliance with this section shall be deemed to meet the requirements of Section 17585.

(c) A district to which paragraph (2) of subdivision (b) does not apply shall certify to the board that it can reasonably maintain its facilities with a lesser level of maintenance.

(d) For the purposes of calculating a county office of education requirement pursuant to this section, the 3 percent maintenance requirement shall be calculated based upon the county office of education general fund less any restricted accounts.

SEC. 11. Section 17150 of the Education Code is amended to read:

17150. (a) Upon the approval by the governing board of the school district to proceed with the issuance of certificates of participation revenue bonds or to enter into any agreement for financing school construction pursuant to Chapter 18 (commencing with Section 17170), the school district shall notify the county superintendent of schools and the county auditor. The superintendent of the school district shall provide the repayment schedules for that debt obligation, and evidence of the ability of the school district to repay that obligation, to the county auditor, the county superintendent, the governing board, and the public. Within 15 days of the receipt of the information, the county superintendent of schools and the county auditor may comment publicly to the governing board of the school district regarding the capability of the school district to repay that debt obligation.

(b) Upon the approval by the county board of education to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing pursuant to Chapter 18 (commencing with Section 17170), the county superintendent of schools or superintendent of a school district for which the county board serves as governing board shall notify the Superintendent of Public Instruction. The county superintendent of schools or the superintendent of a school district for which the county board serves as the governing board shall provide the repayment schedules for that debt obligation and evidence of the ability of the county office of education or school district to repay that obligation, to the Superintendent of Public Instruction, the governing board, and the public. Within 15 days of the receipt of the information the Superintendent of Public Instruction may comment publicly to the county board of education regarding the capability of the county office of education or school district to repay that debt obligation.

(c) Prior to delivery of the notice required by subdivision (a) neither the county nor any of its officers shall have any responsibility for the administration of the school district's indebtedness. Failure to comply with the requirements of this section will not affect the validity of the indebtedness.

SEC. 12. Section 17582 of the Education Code is amended to read:

17582. (a) The governing board of each school district may establish a restricted fund to be known as the ''district deferred maintenance fund'' for the purpose of major repair or replacement of plumbing, heating, air conditioning, electrical, roofing, and floor systems, the exterior and interior painting of school buildings, the inspection, sampling, and analysis of building materials to determine the presence of asbestos-containing materials, the encapsulation or removal of asbestos-containing materials, and any other items of maintenance approved by the State Allocation Board. Funds deposited in the district deferred maintenance fund may be received from any source whatsoever, and shall be accounted for separately from all other funds and accounts and retained in the district deferred maintenance fund for purposes of this section. The term ''school building'' as used in this article includes a facility that a county office of education is authorized to use pursuant to Article 3 (commencing with Section 17280) of Chapter 3.

(b) Funds deposited in the district deferred maintenance fund shall only be expended for maintenance purposes as provided pursuant to subdivision (a).

(c) The governing board of each school district shall have complete control over the funds and earnings of funds once deposited in the district deferred maintenance fund, provided that no funds deposited in the district deferred maintenance fund pursuant to subdivision (a) or (b) of Section 17584 may be expended by the governing board for any purpose except those specified in subdivision (a) of this section.

SEC. 13. Section 17584 of the Education Code is amended to read:

17584. (a) Whenever, in any given fiscal year, a school district has budgeted, exclusive of state matching funds and district funds previously matched pursuant to subdivision (b), in its deferred maintenance fund established pursuant to Section 17582 an amount equal to, or greater than, that amount the district expended from its general fund for major maintenance, repair, or modernization of existing school buildings, as specified in Section 17582, exclusive of categorical aid funds and any proceeds from the sale of district property which were expended for the purpose of the district deferred maintenance account, in either the 1978–79 or 1979–80 fiscal year, adjusted annually to the current fiscal year in conformance with the percentage change in the district revenue limit computed pursuant to Section 42237 or 42238, the Superintendent of Public Instruction shall so certify to the State Allocation Board.

(b) The State Allocation Board shall apportion, from the State School Deferred Maintenance Fund, to school districts an amount equal to one dollar ($1) for each one dollar ($1) of local funds up to a maximum of $^1/_2$ percent of the district's current-year revenue limit average daily

attendance multiplied by the average, per unit of average daily attendance, of the total expenditures and ending fund balances of the total general funds and adult education funds for districts of similar size and type, as defined in subdivision (b) of Section 42238.4, for the second prior fiscal year, exclusive of any amounts expended for capital outlay, debt service, or revenues that are passed through to other local education agencies, to the extent of funds available.

(c) Notwithstanding subdivision (a), in order to be eligible to receive state aid pursuant to subdivision (b), no district shall be required to budget from local district funds an amount greater than $^1/_2$ percent of the district's current-year revenue limit average daily attendance, multiplied by the average, per unit of average daily attendance, of the total expenditures and ending fund balances of the total general funds and adult education funds for districts of similar size and type, as defined in subdivision (b) of Section 42238.4 for the second prior fiscal year, exclusive of any amounts expended for capital outlay, debt service, or revenues that are passed through to other local educational agencies.

SEC. 14. Section 22303.5 of the Education Code is amended to read:

22303.5. (a) Notwithstanding any other provision of law, the board shall offer a midcareer retirement information program for the benefit of all members.

(b) In implementing this section, the board shall develop plans for the development and delivery of information to enhance awareness of the features and benefits of the Defined Benefit Program, and services of the system, federal Social Security Act programs and benefits as they apply to members, and awareness of personal planning responsibilities. This information shall be provided to assist members in understanding the importance of financial, legal, estate, and personal planning, and how choices and options offered by the system may impact retirement.

(c) The board, at a public meeting, may assess a participation fee for the recovery of all startup and ongoing expenses of the midcareer information program.

(d) The board shall provide both active and retired members with notice pertaining to paragraph (1) of subdivision (c) of Section 44830 and pertaining to Section 44252.5, making all members aware of the time constraints and possible requirement for passing the state basic skills proficiency test if an individual wants to return to the classroom after 39 months. The methods for providing the notice may include, but are not limited to, any of the following:

(1) Inclusion in annual member publications.

(2) Inclusion within packets of information provided to members upon or prior to retirement.

(3) Inclusion as an attachment to any warrants issued to members.

SEC. 15. Section 32228 of the Education Code is amended to read:

32228. (a) It is the intent of the Legislature that public schools serving pupils in any of grades 8 to 12, inclusive, have access to supplemental resources to establish programs and strategies that promote school safety and emphasize violence prevention among children and youth in the public schools.

(b) It is also the intent of the Legislature that public schools have access to supplemental resources to combat bias on the basis of race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, as defined in subdivision (q) of Section 12926 of the Government Code, and to prevent and respond to acts of hate violence and bias related incidents. Sexual orientation shall not include pedophilia.

(c) It is further the intent of the Legislature that schoolsites receiving funds pursuant to this article accomplish all of the following goals:

(1) Teach pupils techniques for resolving conflicts without violence.

(2) Train school staff and administrators to support and promote conflict resolution and mediation techniques for resolving conflicts between and among pupils.

(3) Reduce incidents of violence at the schoolsite with an emphasis on prevention and early detection.

SEC. 16. Section 32228.1 of the Education Code is amended to read:

32228.1. (a) The School Safety and Violence Prevention Act is hereby established. This statewide program shall be administered by the Superintendent of Public Instruction, who shall provide funds to school districts serving pupils in any of grades 8 to 12, inclusive, for the purpose of promoting school safety and reducing schoolsite violence. As a condition of receiving funds pursuant to this article, an eligible school district shall certify, on forms and in a manner required by the Superintendent of Public Instruction, that the funds will be used as described.

(b) From funds appropriated in the annual Budget Act or any other measure, funds shall be allocated to school districts on the basis of prior year enrollment, as reported by the California Basic Educational Data System, of pupils in any of grades 8 to 12, inclusive, for any one or more of the following purposes:

(1) Providing schools with personnel, including, but not limited to, licensed or certificated school counselors, school social workers, school nurses, and school psychologists, who are trained in conflict resolution. Any law enforcement personnel hired pursuant to this article shall be trained and sworn peace officers.

(2) Providing effective and accessible on-campus communication devices and other school safety infrastructure needs.

(3) Establishing an in-service training program for school staff to learn to identify at-risk pupils, to communicate effectively with those pupils, and to refer those pupils to appropriate counseling.

(4) Establishing cooperative arrangements with local law enforcement agencies for appropriate school-community relationships.

(5) Preventing and responding to acts of hate violence and bias related incidents, including implementation of programs and instructional curricula consistent with the goals set forth in this section and guidelines developed pursuant to paragraph (1) of subdivision (b) of Section 233.

(6) For any other purpose that the school or school district determines that would materially contribute to meeting the goals and objectives of current law in providing for safe schools and preventing violence among pupils.

SEC. 17. Section 33533 of the Education Code is amended to read:

33533. The Superintendent of Public Instruction and the State Board of Education shall consider for membership on the commission persons representing subjects commonly taught in public schools, including:

(a) English.

(b) Social sciences.

(c) Foreign languages.

(d) Science.

(e) Mathematics.

(f) Visual and performing arts.

(g) Applied arts.

(h) Conservation education.

SEC. 18. Section 37220.6 of the Education Code is amended to read:

37220.6. (a) There is hereby created the Cesar Chavez Day of Service and Learning program to promote service to the communities of California in honor of the life and work of Cesar Chavez. The program shall be administered by the California Commission on Improving Life Through Service in collaboration with the California Conservation Corps.

(b) The California Commission on Improving Life Through Service may make grants based on proposals selected through a competitive process from local and state operated Americorps, National Senior Service Corps, Learn and Serve, or Conservation Corps programs that submit proposals to engage pupils through their schools and school districts in community service that qualifies as instructional time on Cesar Chavez Day, pursuant to Section 37220.5, and that honors the life and work of Cesar Chavez. The programs shall be created and organized in consultation with community groups. The Americorps, National Senior Service Corps, Learn and Serve, or Conservation Corps programs

may implement or administer the programs in collaboration with community groups and nonprofit organizations. The proposals shall demonstrate all of the following:

(1) The ways and extent to which the program will be a collaborative effort between schools and the Americorps, National Senior Service Corps, Learn and Serve, or Conservation Corps program.

(2) The ways that the service will be connected to instruction on the life and work of Cesar Chavez provided on Cesar Chavez Day.

(3) The way in which the service provided will make a meaningful contribution to the community.

(c) Grants made pursuant to subdivision (b) shall be in the amount of one dollar ($1) for each participating pupil, or two hundred fifty dollars ($250) for each school, whichever is greater. The California Commission on Improving Life Through Service may, at its discretion, adjust the grant amount to account for school district size, the size of the project, and the demand on existing funding. Under no circumstances may the amount granted exceed the amount of funding appropriated to carry out this section.

(d) In order for the community service performed under this program to be counted as instructional time, the service shall be performed under the supervision of a teacher, as defined in subdivision (a) of Section 46300.

(e) The Superintendent of Public Instruction shall develop or revise, as needed, a model curriculum on the life and work of Cesar Chavez and submit the model curriculum to the State Board of Education for adoption pursuant to subdivision (b) of Section 37220.5. Upon adoption, the Superintendent of Public Instruction shall distribute the model curriculum to each school.

(f) It is the intent of the Legislature that nothing in this section, or in the act that adds this section, shall be construed to impose a mandate on school districts.

(g) For the purposes of this section, ''school district'' includes school districts, charter schools, and county offices of education.

SEC. 19. Section 41374 of the Education Code is amended to read:

41374. Notwithstanding any other provision of law to the contrary, Section 41372 shall not apply to any elementary school district, high school district, or unified school district, which maintains no individual class session with pupils in attendance exceeding the numbers, for the particular grade levels, following:

(a) An elementary school district—twenty-eight (28) pupils.

(b) A high school district—twenty-five (25) pupils.

(c) A unified school district—twenty-eight (28) pupils in respect to grades kindergarten through 8, inclusive; and twenty-five (25) pupils in respect to grades 9 through 12, inclusive.

As used in this section the phrase ''individual class session'' shall not include any class session held in grades kindergarten through 8, inclusive, in courses in visual and performing arts, industrial arts, and physical education. The phrase shall not include any class session held in grades 9 through 12, inclusive, in courses in commercial arts, visual and performing arts, industrial arts, vocational arts, and physical education. The phrase ''individual class session'' shall not include any class session held in grades 9 through 12, inclusive, for which two or more individual class groups which come within the descriptions specified by the first paragraph of this section and subdivision (a) or (b), or both, are assembled together in the same room for joint lectures or demonstrations.

Notwithstanding the provisions of subdivisions (b) and (c), grades 7, 8, and 9 of a junior high school shall be deemed to be high school grades for purposes of this section.

SEC. 20. Section 41409 of the Education Code is amended to read:

41409. (a) Commencing with the 1988–89 fiscal year, and annually thereafter, the Superintendent of Public Instruction shall determine the statewide average percentage of school district expenditures that are allocated to the salaries of administrative personnel, as that term is defined in accounts 1200, 1300, 1700, 1800, and 2200 in Part I of the California School Accounting Manual published by the State Department of Education. For school districts using the Standardized Account Code Structure, the term salaries of administrative personnel are defined in object accounts 1300 and 2300 in Part II of the California School Accounting Manual. The Superintendent of Public Instruction also shall determine the statewide average percentage of school district expenditures that are allocated to the salaries of teachers, as defined in account 1100 in Parts I and II of the California School Accounting Manual. The statewide averages shall be calculated for the following types and sizes of school districts:

| District | ADA |
|---|---|
| Elementary | less than 1,000 |
| Elementary | 1,000 to 4,999 |
| Elementary | 5,000 and greater |
| High School | less than 1,000 |
| High School | 1,000 to 3,999 |
| High School | 4,000 and greater |
| Unified | less than 1,500 |
| Unified | 1,500 to 4,999 |
| Unified | 5,000 to 9,999 |
| Unified | 10,000 to 19,999 |
| Unified | 20,000 and greater |

(b) Commencing with the 1988–89 fiscal year, and annually thereafter, the Superintendent of Public Instruction shall determine the statewide average salary, by size and type of district, for the following:

(1) Beginning, mid-range, and highest salary paid to teachers.

(2) Schoolsite principals.

(3) District superintendents.

(c) The statewide averages calculated pursuant to subdivisions (a) and (b) shall be provided annually to each school district for use in the school accountability report card.

SEC. 21. Section 42238.44 of the Education Code is amended to read:

42238.44. (a) This section shall be known and may be cited as, the Fairness in Education Funding Act.

(b) (1) For the 2001–02 fiscal year, the Superintendent of Public Instruction shall compute an equalization adjustment for each school district, so that no district's 2000–01 base revenue limit per unit of average daily attendance is less than the 2000–01 base revenue limit per unit of average daily attendance above which fall not more than 10 percent of the total statewide units of average daily attendance for each category of school district set forth in subdivision (c).

(2) For purposes of this section, the district base revenue limit and the statewide average base revenue limit shall not include any amounts attributable to Section 45023.4, 46200, or 46201.

(c) Subdivision (b) shall apply to the following school districts, which shall be grouped according to size and type as follows:

| District | ADA |
|---|---|
| Elementary | less than 101 |
| Elementary | more than 100 |
| High School | less than 301 |

| | |
|---|---|
| High School | more than 300 |
| Unified | less than 1,501 |
| Unified | more than 1,500 |

(d) The Superintendent of Public Instruction shall compute a revenue limit equalization adjustment for each school district's base revenue limit per unit of average daily attendance as follows:

(1) Multiply the amount computed for each school district pursuant to subdivision (b) by the average daily attendance used to calculate the district's revenue limit for the current fiscal year.

(2) Divide the amount appropriated for purposes of this section for the then current fiscal year by the statewide sum of the amount computed pursuant to paragraph (1).

(3) Multiply the amount computed for the school district pursuant to paragraph (1) of subdivision (b) by the amount computed pursuant to paragraph (2).

(e) (1) For the purposes of this section, the 2000–01 statewide 90th percentile base revenue limit determined pursuant to paragraph (1) of subdivision (b), and the fraction computed pursuant to paragraph (2) of subdivision (d) for the 2000–01 second principal apportionment, shall be final, and shall not be recalculated at subsequent apportionments. The fraction computed pursuant to paragraph (2) of subdivision (d) shall not, under any circumstances, exceed 1.00. For purposes of determining the size of a school district pursuant to subdivision (c), county superintendents of schools, in conjunction with the Superintendent of Public Instruction, shall use school district revenue limit average daily attendance for the prior fiscal year as determined pursuant to Section 42238.5 and Article 4 (commencing with Section 42280).

(2) For the purposes of calculating the size of a school district pursuant to subdivision (c), the Superintendent of Public Instruction shall include units of average daily attendance of any charter school for which the school district is the chartering agency.

(3) For the purposes of computing the target amounts pursuant to subdivision (b), the Superintendent of Public Instruction shall count all charter school average daily attendance toward the average daily attendance of the school district that is the chartering agency.

SEC. 22. Section 42239.15 of the Education Code is amended to read:

42239.15. (a) For the 2000–01 fiscal year and each fiscal year thereafter, each school district and charter school shall be eligible for reimbursement for hours of pupil attendance claimed for intensive algebra instruction academies offered pursuant to Chapter 18 (commencing with Section 53091) of Part 28 in an amount up to 6 percent of the total enrollment in grades 7 and 8 of the school district or

charter school for the prior fiscal year multiplied by 120 hours, multiplied by the hourly rate for the current fiscal year determined pursuant to subdivision (c) of Section 42239. This amount shall be provided in addition to the amount provided pursuant to Section 42239.

(b) When expending funds received pursuant to this section, a school district shall give first priority for the purpose specified in paragraph (1) of subdivision (d) of Section 53092.

SEC. 23. Section 42650 of the Education Code is amended to read:

42650. With the approval of the county superintendent of schools, the governing board of a school district may cause warrants to be drawn on the county treasury against designated funds, except debt service, of the district in the county treasury in the payment of expenses of the district. The warrants for salary and other types of claims designated by the county superintendent shall be issued by a person designated as the district disbursing officer for the school district on the county treasury in favor of the persons entitled thereto in payment of all claims in designated categories chargeable against the district which have been legally examined, allowed, and ordered paid by the governing board. The district disbursing officer shall issue warrants, using procedures prescribed by the county auditor, on the county treasury for all debts and demands, within categories designated by the county superintendent, against the district when amounts are legally approved. The form of the warrant shall be prescribed by, and approved by, the county auditor or county treasurer having jurisdiction.

The cost of printing warrants may be charged to the district. Notwithstanding Section 41000, except for assessing and tax collecting, the county auditor and county treasurer may charge those districts that draw their own warrants for the cost of all fiscal services.

Notwithstanding Section 27005 of the Government Code, or any other provision of law requiring orders for warrants or warrants to be signed by the county superintendent of schools or the county auditor, or both, the county superintendent and county auditor may prescribe alternative procedures for districts to issue warrants. The district disbursing officer shall not be considered a deputy county superintendent of schools or a deputy county auditor. The county treasurer shall pay the warrant in the designated category, if district funds are available.

County officers shall not be responsible for providing reports, statements, or other data relating to, or based on, the designated payments of expenses of the district. Those districts issuing warrants, as provided by this section, shall provide the county superintendent of schools, in the form prescribed by him, with the data necessary to make retirement reports and other reports required of him by law. All warrants, vouchers, and supporting documents shall be kept by school districts that draw their own warrants in those designated categories.

The county superintendent shall provide for a periodic review of the districts' financial transactions and internal control pursuant to Section 1241.5.

County superintendents of schools may provide fiscal, budgetary, and data-processing services through contractual agreements to school districts that have been determined to be fiscally accountable under the provisions of this section.

The person authorized by the governing board of the district to issue warrants, pursuant to this section, shall execute an official bond in an amount fixed by the governing board conditioned upon the faithful performance of his duties under this section. A county superintendent or county auditor shall not be liable under the terms of their bonds or otherwise for any warrant issued pursuant to this section. This section shall not be construed as impairing the obligation of any contract in the bond of such officer in effect on January 1, 1977.

A listing of the warrants issued under this section by each school district shall be forwarded to the county auditor having jurisdiction, upon his request, and to the county superintendent of schools having jurisdiction over the district on the same day warrants are issued. The listing, which may be on magnetic tape, punched cards, or in other form, shall report, among other things, the warrant number, date of the warrant, amount of the warrant, the name of the payee, and the fund on which drawn. The form and content of the warrant listing shall be as prescribed by the county auditor or county superintendent and approved by the county auditor or county superintendent having jurisdiction.

Each district which issues warrants pursuant to this section shall furnish monthly to the county superintendent of schools and the county auditor of the county of jurisdiction, upon his request, a statement showing for the current fiscal year to date, for each required expenditure classification, the amount budgeted, actual expenditures, encumbrances and unencumbered balances.

In order to obtain the approval of the county superintendent of schools and county auditor for fiscally accountable status, the governing board of a school district shall file a written application with the county superintendent of schools and county auditor having jurisdiction on forms which the county superintendent shall prescribe. Upon receipt of an application from the district, the county superintendent shall cause an audit to be made of the district's management and accounting controls, in accordance with standards prescribed by him, by an independent certified public accountant or public accountant approved by the county superintendent, who shall report his findings and recommendations to the county superintendent and to the applicant district. The audit report may include Department of Finance guidelines and other assessments of fiscal management as required by the county superintendent or the audit

may be the report of the annual district audit pursuant to Section 41020 if that is acceptable to the county superintendent of schools. The cost of the audit required in support of a district's application for fiscal accountability shall be borne by the applicant district.

The county superintendent and county auditor shall review the district's application and report of financial management and control and may approve the application if they find the management and accounting controls of the district to be adequate. If the county superintendent and county auditor determine that such management and accounting controls are inadequate, they shall disapprove the application.

A district that applies for fiscal accountability status shall file its written application with the county superintendent of schools on or before September 1. The required audit of financial management and accounting controls shall be filed on or before January 1. When a district's application for fiscal accountability status has been approved by the county superintendent of schools and county auditor, the issuance of warrants by the district pursuant to this section shall be effective at the beginning of a fiscal year, provided that approval had been made prior to the preceding first day in March. If disapproved, the county superintendent of schools shall state the specific steps which must be taken by the applicant school district to receive approval and these changes shall be certified as completed by an independent certified public accountant or public accountant before the county superintendent shall approve the application. If at any time the county superintendent of schools or the county auditor determines that the financial management or accounting controls of the district have become inadequate, either such officer may revoke approval for fiscal accountability status effective immediately.

SEC. 24. Section 42850 of the Education Code is amended to read:

42850. The governing board of any school district may establish a pension plan and other employee benefits fund to accumulate restricted moneys from salary reduction agreements, other contributions for employee retirement benefit payments, or both. Moneys may be transferred to the fund from other funds by periodic expense charges, in amounts based on existing and future obligation requirements. Payments from the pension plan and other employee benefits fund for insurance, annuities, administrative costs, or any other authorized purpose shall be made in accordance with all warrant approval requirements applicable under this code.

SEC. 25. Section 44395.5 is added to the Education Code, to read:

44395.5. For the purposes of paragraph (1) of subdivision (a) of Section 44395, ''assigned to teach'' as used in subdivision (a) of that section may include, but is not limited to, a teacher leadership role as a peer assistance and review coach, mentor, or other teacher support

provider if the position does not require an administrative credential. In order to be eligible for an award pursuant to paragraph (1) of subdivision (a) of Section 44395, a teacher shall be assigned to teach for at least 50 percent of a full-time position.

SEC. 26. Section 44503 of the Education Code is amended to read:

44503. (a) The governing board of a school district that accepts state funds for purposes of this article agrees to negotiate the development and implementation of the program with the exclusive representative of the certificated employees in the school district, if the certificated employees in the district are represented by an exclusive representative. In a school district in which the certificated employees are not represented, the school district shall develop a Peer Assistance and Review Program for Teachers consistent with this article in order to be eligible to receive funding under this article.

(b) Functions performed pursuant to this article by certificated employees employed in a bargaining unit position shall not constitute either management or supervisory functions as defined by subdivisions (g) and (m) of Section 3540.1 of the Government Code.

(c) Teachers who provide assistance and review shall have the same protection from liability and access to appropriate defense as other public school employees pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(d) It is the intent of the Legislature that school districts be allowed to combine, by mutual agreement, their programs of peer assistance and review with those of other school districts.

(e) Not more than 5 percent of the funds received by a school district for the Peer Assistance and Review Program for Teachers may be expended for administrative expenses. For the purposes of this article, administrative expenses shall include expenditures for the personnel costs of program administration and coordination, the cost of consulting teacher selection, and indirect costs associated with the Peer Assistance and Review Program for Teachers.

SEC. 27. Section 47661.5 is added to the Education Code, to read:

47661.5. (a) Notwithstanding any other provision of law, the prior year average daily attendance for a school district determined pursuant to subdivision (b) of Section 47661 shall be increased by the prior year second principal apportionment average daily attendance of district residents only of any school that meets the following description:

(1) The school was a district noncharter school in any year prior to the prior year.

(2) The school was operated as a district-approved charter school in the prior year.

(3) The school is again operated as a district noncharter school in the current year.

(b) An adjustment to prior year average daily attendance pursuant to this section may not be made for the attendance of pupils who were not residents of the school district in the prior year.

(c) This section applies to the 2000–01 fiscal year and subsequent fiscal years.

SEC. 28. Section 47773 of the Education Code is amended to read:

47773. (a) The State Department of Education, in collaboration with the Board of Corrections, shall create an evaluation design for the program that will assess the effectiveness of program implementation and operation.

(b) The State Department of Education shall contract with an independent evaluator to assess the overall success of the program.

(c) Participating county offices of education and school districts shall collect and report outcome measure data to the State Department of Education and any other data to indicate the effect of intervention strategies and program operations on the risk factors used to identify the high-risk youth. The Superintendent of Public Instruction shall annually summarize the data reported. The Superintendent of Public Instruction shall also develop an analysis of the program and suggest recommendations in a final report to be submitted to the Legislature on or before May 1, 2004, and shall provide an interim report to the Legislature by March 1, 2002.

SEC. 29. Section 48264.5 of the Education Code is amended to read:

48264.5. Any minor who is required to be reported as a truant pursuant to Section 48260 or 48261 may be required to attend makeup classes conducted on one day of a weekend pursuant to subdivision (c) of Section 37223 and is subject to the following:

(a) The first time a truancy report is required, the pupil may be personally given a written warning by any peace officer specified in Section 830.1 of the Penal Code. A record of the written warning may be kept at the school for a period of not less than two years, or until the pupil graduates, or transfers, from that school. If the pupil transfers, the record may be forwarded to any school receiving the pupil's school records. A record of the written warning may be maintained by the law enforcement agency in accordance with that law enforcement agency's policies and procedures.

(b) The second time a truancy report is required within the same school year, the pupil may be assigned by the school to an afterschool or weekend study program located within the same county as the pupil's school. If the pupil fails to successfully complete the assigned study program, the pupil shall be subject to subdivision (c).

(c) The third time a truancy report is required within the same school year, the pupil shall be classified a habitual truant, as defined in Section

48262, and may be referred to, and required to attend, an attendance review board or a truancy mediation program pursuant to Section 48263 or pursuant to Section 601.3 of the Welfare and Institutions Code. If the district does not have a truancy mediation program, the pupil may be required to attend a comparable program deemed acceptable by the school district's attendance supervisor. If the pupil does not successfully complete the truancy mediation program or other similar program, the pupil shall be subject to subdivision (d).

(d) The fourth time a truancy is required to be reported within the same school year, the pupil shall be within the jurisdiction of the juvenile court which may adjudge the pupil to be a ward of the court pursuant to Section 601 of the Welfare and Institutions Code. If the pupil is adjudged a ward of the court, the pupil shall be required to do one or more of the following:

(1) Performance at court-approved community services sponsored by either a public or private nonprofit agency for not less than 20 hours but not more than 40 hours over a period not to exceed 90 days, during a time other than the pupil's hours of school attendance or employment. The probation officer shall report to the court the failure of the pupil to comply with this paragraph.

(2) Payment of a fine by the pupil of not more than one hundred dollars ($100) for which a parent or guardian of the pupil may be jointly liable.

(3) Attendance of a court-approved truancy prevention program.

(4) Suspension or revocation of driving privileges pursuant to Section 13202.7 of the Vehicle Code. This subdivision shall apply only to a pupil who has attended a school attendance review board program, a program operated by a probation department acting as a school attendance review board, or a truancy mediation program pursuant to subdivision (c).

SEC. 30. Section 51210 of the Education Code is amended to read:

51210. The adopted course of study for grades 1 to 6, inclusive, shall include instruction, beginning in grade 1 and continuing through grade 6, in the following areas of study:

(a) English, including knowledge of, and appreciation for literature and the language, as well as the skills of speaking, reading, listening, spelling, handwriting, and composition.

(b) Mathematics, including concepts, operational skills, and problem solving.

(c) Social sciences, drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, designed to fit the maturity of the pupils. Instruction shall provide a foundation for understanding the history, resources, development, and government of California and the United States of

America; the development of the American economic system including the role of the entrepreneur and labor; the relations of persons to their human and natural environment; eastern and western cultures and civilizations; contemporary issues; and the wise use of natural resources.

(d) Science, including the biological and physical aspects, with emphasis on the processes of experimental inquiry and on the place of humans in ecological systems.

(e) Visual and performing arts, including instruction in the subjects of dance, music, theatre, and visual arts, aimed at the development of aesthetic appreciation and the skills of creative expression.

(f) Health, including instruction in the principles and practices of individual, family, and community health.

(g) Physical education, with emphasis upon the physical activities for the pupils that may be conducive to health and vigor of body and mind, for a total period of time of not less than 200 minutes each 10 schooldays, exclusive of recesses and the lunch period.

(h) Other studies that may be prescribed by the governing board.

SEC. 31. Section 51220 of the Education Code is amended to read:

51220. The adopted course of study for grades 7 to 12, inclusive, shall offer courses in the following areas of study:

(a) English, including knowledge of and appreciation for literature, language, and composition, and the skills of reading, listening, and speaking.

(b) Social sciences, drawing upon the disciplines of anthropology, economics, geography, history, political science, psychology, and sociology, designed to fit the maturity of the pupils. Instruction shall provide a foundation for understanding the history, resources, development, and government of California and the United States of America; instruction in our American legal system, the operation of the juvenile and adult criminal justice systems, and the rights and duties of citizens under the criminal and civil law and the State and Federal Constitutions; the development of the American economic system, including the role of the entrepreneur and labor; the relations of persons to their human and natural environment; eastern and western cultures and civilizations; human rights issues, with particular attention to the study of the inhumanity of genocide, slavery, and the Holocaust, and contemporary issues.

(c) Foreign language or languages, beginning not later than grade 7, designed to develop a facility for understanding, speaking, reading, and writing the particular language.

(d) Physical education, with emphasis given to physical activities that are conducive to health and to vigor of body and mind.

(e) Science, including the physical and biological aspects, with emphasis on basic concepts, theories, and processes of scientific

investigation and on the place of humans in ecological systems, and with appropriate applications of the interrelation and interdependence of the sciences.

(f) Mathematics, including instruction designed to develop mathematical understandings, operational skills, and insight into problem solving procedures.

(g) Visual and performing arts, including dance, music, theatre, and visual arts, with emphasis upon development of aesthetic appreciation and the skills of creative expression.

(h) Applied arts, including instruction in the areas of consumer and homemaking education, industrial arts, general business education, or general agriculture.

(i) Career technical education designed and conducted for the purpose of preparing youth for gainful employment in the occupations and in the numbers that are appropriate to the personnel needs of the state and the community served and relevant to the career desires and needs of the pupils.

(j) Automobile driver education, designed to develop a knowledge of the provisions of the Vehicle Code and other laws of this state relating to the operation of motor vehicles, a proper acceptance of personal responsibility in traffic, a true appreciation of the causes, seriousness and consequences of traffic accidents, and to develop the knowledge and attitudes necessary for the safe operation of motor vehicles. A course in automobile driver education shall include education in the safe operation of motorcycles.

(k) Other studies as may be prescribed by the governing board.

SEC. 32. Section 51224.5 of the Education Code is amended to read:

51224.5. (a) The adopted course of study for grades 7 to 12, inclusive, shall include algebra as part of the mathematics area of study pursuant to subdivision (f) of Section 51220.

(b) Commencing with the 2003–04 school year and each year thereafter, at least one course, or a combination of the two courses in mathematics required to be completed pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3 by pupils while in grades 9 to 12, inclusive, prior to receiving a diploma of graduation from high school, shall meet or exceed the rigor of the content standards for Algebra I, as adopted by the State Board of Education pursuant to Section 60605.

(c) If at any time, in any of grades 7 to 12, inclusive, or in any combination of those grades, a pupil completes coursework that meets or exceeds the academic content standards for Algebra. Those courses shall apply towards satisfying the requirements of subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3.

SEC. 33. Section 51511 of the Education Code is amended to read:

51511. Nothing in this code shall be construed to prevent, or exclude from the public schools, references to religion or references to or the use of religious literature, dance, music, theatre, and visual arts or other things having a religious significance when such references or uses do not constitute instruction in religious principles or aid to any religious sect, church, creed, or sectarian purpose and when such references or uses are incidental to or illustrative of matters properly included in the course of study.

SEC. 34. Section 51810 of the Education Code is amended to read:

51810. The governing board of any school district maintaining secondary schools is authorized without the approval of the State Department of Education to establish and maintain community service classes in civic, vocational, literacy, health, homemaking, technical and general education, including but not limited to classes in the fields of dance, music, theatre, visual arts, handicraft, science, literature, nature study, nature contacting, aquatic sports and athletics. These classes shall be designed to provide instruction and to contribute to the physical, mental, moral, economic, or civic development of the individuals or groups enrolled therein.

SEC. 35. Section 51874 of the Education Code is amended to read:

51874. Sections 51871, 51872, 51873, this section, and the heading of 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.

SEC. 36. Section 52066 of the Education Code is amended to read:

52066. The State Department of Education shall prepare a request for proposal in consultation with an advisory committee consisting of a representative of one or more American Indian organizations, the Department of Finance, and the Legislative Analyst to contract for an independent evaluation of this program to be performed on or before December 31, 2001.

SEC. 37. Section 52067 of the Education Code is amended to read:

52067. 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. 38. Section 52334 of the Education Code is amended to read:

52334. Indirect costs charged to regional occupational centers and programs may not exceed that of the school district or county office of education, as appropriate, prior year indirect cost rate as approved by the State Department of Education.

The indirect costs charged by county offices of education and school districts that provide regional occupational centers and programs services on behalf of the county office of education or joint powers

authority, when added together, may not exceed the indirect cost rate approved by the State Department of Education for the county office of education or the school district, whichever is higher.

Revenue limit funds apportioned to a county office of education or school district for regional occupational centers and programs must be expended on programs and services offered by the regional occupational centers and programs.

SEC. 39. Section 52523 of the Education Code is amended to read:

52523. Adult education programs, courses, and classes shall not be used to supplant the regular high school curriculum for high school pupils enrolled in adult education. Adult education shall supplement and enrich the high school pupil's educational experiences. Therefore, adult education, at a minimum, shall meet the following criteria:

(a) All programs, courses, and classes conducted as adult education shall be open to adults and listed in the district's catalog of adult education classes provided to the public and shall be under the supervision and jurisdiction of the adult education administrator as determined by the school district governing board. Adults shall have priority over other students for admission to any adult education class if those adults enroll not later than the regular enrollment period for those classes. The enrollment period shall be published in the course catalog. No course required by the school district for high school graduation or necessary for pupils to maintain satisfactory academic progress shall be offered exclusively through the adult education program. An adult for purposes of this section is a person 18 years of age or older or other person who is not concurrently enrolled in a regular high school program.

(b) Each adult education teacher, whether part time or full time, under contract status or in an hourly position, shall be part of the adult school faculty and shall be under the direct supervision of the authorized adult education administrator.

(c) Enrollment of high school pupils shall be voluntary on the part of the pupil taking the class. Prior to enrollment by a high school pupil in an adult education program, class, or course, the pupil shall have documentation of the counseling session held pursuant to subdivision (b) of Section 52500.1.

(d) Enrollment of a high school pupil in an adult education program, course, or class shall be for sound educational purposes, including, but not limited to, the following:

(1) The adult education program, course, or class is not offered in the regular high school curriculum.

(2) The adult education program, course, or class is needed by the pupil to make up deficient credits for graduation from high school.

(3) The adult education program, course, or class allows the pupil to gain vocational and technical skills beyond that provided by the regular high school's vocational and technical education program.

(4) The adult education program, course, or class, supplements and enriches the high school pupil's educational experience.

(e) A high school pupil shall not be enrolled for apportionment purposes in an adult education program, course, or class that would be considered any of the following:

(1) Physical education.

(2) Driver's training and education.

(3) Visual and performing arts.

(4) Band.

(5) Preparation of a school yearbook or school newspaper.

(6) Training for, or participation in, athletic camps, cheerleading or spirit organizations, student government, or extracurricular student clubs.

The Superintendent of Public Instruction shall issue a program advisory that further defines the purposes set forth in subdivision (d) and the courses set forth in subdivision (e). The superintendent is authorized to issue, at any time, rules and regulations instead of the program advisory.

SEC. 40. Section 52761 of the Education Code is amended to read:

52761. (a) Each elementary school and junior high school or middle school participating in the project shall submit to the superintendent a proposal, which shall include all of the following:

(1) A description of the plant, animal, river, creek, wetlands, or other natural area that the pupils have selected.

(2) A description of strategies that the pupils plan to use to educate other pupils and members of the community about the various benefits of a specific local wildlife species, river, creek, wetland, or other natural area and to identify any impacts to that natural resource. Strategies may include, but need not be limited to, exhibits, public education forums, media events, oral presentations, dance, music, theatre, visual arts, and writing projects.

(3) An action plan designed to monitor and promote the conservation of the selected wildlife species or natural area, while seeking collaborative ways to resolve the identified impacts.

(b) Each participating school shall select a wildlife species or natural area based on the close proximity of the plant, animal, river, creek, wetlands, or other natural area, the feasibility of studying it, and the effectiveness of the course of action that might occur to preserve the species or area.

(c) Pupils shall be encouraged to use appropriate local and state resources, including science faculty and students in postsecondary

education institutions and educational materials that are balanced and objective in their coverage of the current scientific and economic research on environmental and conservation issues, to obtain information to assist them in the selection of wildlife species or natural areas and the development of their proposals.

(d) School faculty and any advisers to pupils engaged in a wildlife or natural area conservation project pursuant to the Life Sciences and Conservation Education Project of 1998 shall ensure that pupils gain a full understanding and appreciation of the rights and responsibilities of public and private property owners under the Constitutions of the United States and California. Any projects or strategies undertaken pursuant to the Life Sciences and Conservation Education Project of 1998 shall respect the rights of private landowners and shall strive to build cooperative relationships within the community to protect local wildlife populations or natural areas.

(e) Pupils participating in the Life Sciences and Conservation Education Project of 1998 shall not as part of the project engage in activities for the purposes of influencing legislative or administrative action.

SEC. 41. Section 53029 of the Education Code is amended to read:

53029. (a) Except as provided in subdivision (b), intensive reading instruction provided pursuant to this article shall be offered four hours per day for six continuous weeks during the summer or when school is not regularly in session.

(b) Due to facilities constraints or for other educational reasons, a school district may offer intensive reading instruction before school, after school, on Saturdays, or during intersession, or in a combination of summer school, before school, after school, Saturday, or intersession instruction. Services may be provided to pupils during the regular instructional day if the instruction is delivered by a certificated employee, provided that the employee is not the pupil's regular classroom teacher, and does not result in the pupil being removed from regular classroom instruction. Instruction provided pursuant to this section shall fulfill the requirements of subdivision (a) of Section 44830 and of Section 44831. Other service providers should have appropriate training in the teaching of reading.

(c) Notwithstanding Section 49550 or any other provision of law, a school district that operates a program pursuant to this article is not required to provide a meal or snack to pupils participating in the program.

SEC. 42. The heading of Chapter 17 (commencing with Section 53081) of Part 28 of the Education Code, as added by Chapter 404 of the Statutes of 2000, is amended to read:

CHAPTER 18. INTENSIVE ALGEBRA INSTRUCTION ACADEMIES PROGRAM

SEC. 43. Section 53081 of the Education Code, as added by Chapter 404 of the Statutes of 2000, is amended and renumbered to read:

53091. This chapter shall be known and may be cited as the Intensive Algebra Instruction Academies Program.

SEC. 44. Section 53082 of the Education Code, as added by Chapter 404 of the Statutes of 2000, is amended and renumbered to read:

53092. (a) A school district or charter school that maintains grade 7 or 8, or both, may operate a program that provides multiple, intensive opportunities for pupils in either of these grades to practice skills in prealgebra, algebra, or both. Funding for the program established pursuant to this chapter shall be provided pursuant to Section 42239.15.

(b) As a condition of receiving funding for this program, a school district or charter school in which one or more teachers participate in the program authorized by Section 99223 is required to offer instruction as described in subdivision (a), to be provided by the teachers attending that program. These school districts and charter schools shall offer this instruction only after those teachers have completed the program authorized by Section 99223. Nothing in this subdivision shall be interpreted as precluding teachers in these school districts who have not participated in the program authorized by Section 99223 from providing instruction as described in subdivision (a).

(c) Pupils shall remain eligible for participation in the program established pursuant to this chapter for three calendar months after completing grade 8.

(d) The purposes of the program established by this chapter include, but are not limited to, both of the following:

(1) To provide pupils who are experiencing difficulty learning prealgebra and algebra with increased instructional opportunities.

(2) To provide stimulating and enriching opportunities for pupils to increase their prealgebra and algebra skills.

(e) (1) Instruction provided pursuant to this program shall include all of the following components:

(A) Mathematics principles generally used in a prealgebra course or an introductory algebra course.

(B) Ongoing diagnostic techniques that inform teaching and assessment.

(C) Early intervention techniques.

(2) Instruction provided pursuant to this chapter shall be consistent with state-adopted academic content standards and with the curriculum framework on mathematics adopted by the State Board of Education for kindergarten and grades 1 to 12, inclusive.

SEC. 45. Section 53083 of the Education Code, as added by Chapter 404 of the Statutes of 2000, is amended and renumbered to read:

53093. (a) (1) Except as provided in paragraph (2), intensive prealgebra and algebra instruction provided pursuant to this chapter shall be offered four hours per day for six continuous weeks during the summer or when school is not regularly in session.

(2) Due to facilities constraints or for other educational reasons, a school district may offer intensive prealgebra and algebra instruction before school, after school, on Saturdays, or during intersession, or in a combination of summer school, after school, Saturday, or intersession instruction.

(b) Instruction provided pursuant to this chapter shall fulfill the requirements of subdivision (a) of Section 44830 and of Section 44831.

(c) Notwithstanding Section 49550 or any other provision of law, a school district that operates a program pursuant to this chapter is not required to provide a meal or snack to pupils participating in the program.

SEC. 46. Section 53084 of the Education Code, as added by Chapter 404 of the Statutes of 2000, is amended and renumbered to read:

53094. The Superintendent of Public Instruction shall provide for an evaluation of the program established pursuant to this chapter on or before November 1, 2002. If funds are needed for this purpose, it is the intent of the Legislature that funds be appropriated for this purpose in the annual Budget Act.

SEC. 47. Section 54746 of the Education Code is amended to read:

54746. (a) In meeting the goals of the program and responding to the individual needs and differences of pupils and their children to be served, the funded agency shall complete an intake procedure regarding each pupil and child upon entry into the program and periodically as needed thereafter.

(b) Based upon the information provided during the intake procedure pursuant to subdivision (a), the funded agency shall determine appropriate levels and types of services to be provided. These services may not duplicate services currently provided to the pupil by a local Adolescent Family Life Program or Cal-Learn program. In addition to an academic program that meets district standards, necessary support services for pupils shall be funded by the calculation pursuant to paragraph (1) of subdivision (a) of Section 54749. Allowable expenditures for support services are as follows:

(1) Parenting education and life skills class.

(2) Perinatal education and care, including childbirth preparation.

(3) Safe home-to-school transportation.

(4) Case management services.

(5) Comprehensive health education, including reproductive health care.

(6) Nutrition education, counseling, and meal supplements.

(7) School safety and violence prevention strategies targeted to pregnant and parenting teens and their children.

(8) Academic support and youth development services, such as tutoring, mentoring, and community service internships.

(9) Career counseling, preemployment skills, and job training.

(10) Substance abuse prevention education, counseling, and treatment services.

(11) Mental health assessment, interventions, and referrals.

(12) Crisis intervention counseling services, including suicide prevention.

(13) Peer support groups and counseling.

(14) Family support and development services, including individual and family counseling.

(15) Child and domestic abuse prevention education, counseling, and services.

(16) Enrichment and recreational activities, as appropriate.

(17) Services that facilitate transition to postsecondary education, training, or employment.

(18) Support services for grandparents, siblings, and fathers of babies who are not enrolled in the Cal-SAFE program.

(19) Outreach activities to identify eligible pupils and to educate the community about the realities of teen pregnancy and parenting.

(c) The funded agency shall provide child care and development program services located on or near the schoolsite for the children of teen parents enrolled in the Cal-SAFE program. Program services shall be funded by the revenue generated pursuant to paragraph (4) of subdivision (a) of Section 54749.

(1) Participation in the child care and development component of the Cal-SAFE program shall be voluntary.

(2) There is no minimum age for enrollment, but the child shall be eligible for enrollment in the child care and development component until the age of five years or the child is enrolled in kindergarten, whichever occurs first, as long as the teen parent is enrolled in the Cal-SAFE program.

(3) Each child shall have a health evaluation form signed by a physician, or his or her designee, before the child is allowed on the school campus or is enrolled in the child care and development program. Health screening and immunizations shall not be required when the custodial parent annually files a written request as provided for in Section 49451 and Section 120365 of the Health and Safety Code.

(4) A developmental profile shall be maintained for each infant, toddler, and child. This development profile shall be utilized by the program staff to design a program that meets the infant's, toddler's, or child's developmental needs.

(5) The arrangement of the child care site environment shall be safe, healthy, and comfortable for children and staff, easily maintained, and appropriate for meeting the developmental needs of the individual child. Child care sites shall meet the health and safety requirements specified in Chapter 1 (commencing with Section 101151) of, and Subchapter 2 (commencing with Section 101351) of, Division 12 of Title 22 of the California Code of Regulations.

(6) The child care and development component of the Cal-SAFE program shall operate pursuant to applicable sections of Chapter 2 (commencing with Section 8200) of Part 6. In addition to meeting the requirements of Section 8360, teachers shall have at least three semester units, or the equivalent number of quarter units, of coursework related to the care of infants and toddlers.

(7) The child care site shall be available as a laboratory for parenting or related courses that are offered by the funded agency with priority given to pupils enrolled in the Cal-SAFE program.

(d) Inservice training for school staff on teen pregnancy and parenting-related issues may be funded from revenue generated pursuant to paragraphs (1) and (4) of subdivision (a) of Section 54749. However, use of these funds for this purpose shall supplement and, not supplant, existing resources in these areas.

(e) The database required pursuant to paragraph (14) of subdivision (c) of Section 54745 may be funded from revenue appropriated for purposes of subdivision (a) of Section 54749.

SEC. 48. Section 54746.5 is added to the Education Code, to read:

54746.5. (a) Local education agencies that are applying to operate a Cal-SAFE program pursuant to Section 54749 but which are not in full compliance may submit a timeline and a corrective action plan for approval by the Superintendent of Public Instruction on a case-by-case basis to extend, to no later than June 30, 2002, a waiver from implementation of the child care and development requirements set forth in paragraph (7) of subdivision (c) of Section 54745 and in subdivision (c) of Section 54746.

(b) Local education agencies that are applying to operate a Cal-SAFE program pursuant to Section 2551.3 but are not in full compliance may submit a timeline and a corrective action plan for approval by the Superintendent of Public Instruction on a case-by-case basis to extend, to no later than June 30, 2002, a waiver from implementation of the child care and development physical environment requirements pursuant to paragraph (5) of subdivision (c) of Section 54746, and as set forth in

subdivision (d) of Section 101238 of, Section 101238.2 of, subdivision (a) of Section 101238.3 of, subdivisions (b) and (c) of Section 101238.4 of, subdivisions (e), (h), and (j) of Section 101239 of, and paragraph (2) of subdivision (a) of Section 101239.2 of, Title 22 of the California Code of Regulations.

(c) If the Superintendent of Public Instruction finds that a local education agency that has submitted a timeline and a corrective action plan pursuant to this section has not complied with all provisions of the corrective action plan as approved by the Superintendent of Public Instruction, the local education agency shall be ineligible for any funding pursuant to Section 2551.3 after the date of mailing of the written notification of noncompliance to the local education agency.

(d) For teachers in Cal-SAFE child care programs operated pursuant to Section 54749, the Superintendent of Public Instruction may waive the qualification requirements of paragraph (6) of subdivision (c) of Section 54746 for the 2001–02 fiscal year if the superintendent determines that the existence of compelling need is appropriately documented and the applicant is making satisfactory progress toward securing a permit issued by the Commission on Teacher Credentialing.

(e) For teachers in Cal-SAFE child care programs operated pursuant to Section 2551.3, the Superintendent of Public Instruction may waive the qualification requirements of paragraph (6) of subdivision (c) of Section 54746 until June 30, 2002, if the superintendent determines that the existence of compelling need is appropriately documented and the applicant is making satisfactory progress toward securing a permit issued by the Commission of Teacher Credentialing.

SEC. 49. Section 54749 of the Education Code is amended to read:

54749. (a) For the 2000–01 fiscal year and each fiscal year thereafter, a school district or county superintendent of schools participating in Cal-SAFE shall be eligible for state funding from funds appropriated for services provided for the purposes of the program as follows:

(1) A support services allowance of two thousand two hundred thirty-seven dollars ($2,237) for each unit of average daily attendance generated by each pupil who has completed the intake process pursuant to subdivision (a) of Section 54746 and is receiving services pursuant to subdivision (b) of Section 54746. This allowance shall be adjusted annually by the inflation factor set forth in subdivision (b) of Section 42238.1. In no event shall more than one support service allowance be generated by any pupil concurrently enrolled in more than one educational program.

This allowance may not be claimed for units of average daily attendance reported pursuant to the following:

(A) Subdivision (b) of Section 1982 for pupils attending county community schools operated pursuant to Chapter 6.5 of Part 2 (commencing with Section 1980).

(B) Pupils attending juvenile court schools operated pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27.

(C) Pupils attending community day schools operated pursuant to Article 3 (commencing with Section 48660) of Chapter 4 of Part 27.

(D) Pupils attending county operated Cal-SAFE programs pursuant to this article whose attendance is reported pursuant to Section 2551.3.

(2) Average daily attendance and revenue limit funding for pupils receiving services in the Cal-SAFE program shall be computed pursuant to provisions and regulations applicable to the educational program or programs that each pupil attends, except as provided in paragraph (3).

(3) For attendance not claimed pursuant to paragraph (2), county offices of education may claim the statewide average revenue limit per unit of average daily attendance for high school districts, payable from Section A of the State School Fund, for the attendance of pupils receiving services in the Cal-SAFE program, provided that no other revenue limit funding is claimed for the same pupil and pupil attendance of no less than 240 minutes per day and is computed and maintained pursuant to Section 46300.

(4) Except as provided in subdivision (c) of Section 54749.5, operators of Cal-SAFE programs shall be reimbursed in accordance with the amount specified in subdivision (b) of Section 8265 and the amounts specified in subdivisions (a) and (b) of Section 8265.5 for each child receiving services pursuant to the Cal-SAFE program who is the child of teen parents enrolled in the Cal-SAFE program. To be eligible for funding pursuant to this paragraph, the operational days of child care and development programs shall be only those necessary to provide child care services to children of pupils participating in Cal-SAFE.

(5) Notwithstanding paragraph (1), pupils for whom attendance is reported pursuant to subdivision (b) of Section 1982, pupils attending juvenile court schools, and pupils attending community day schools may complete the intake process for the Cal-SAFE program and, if the intake process is completed, shall receive services pursuant to subdivision (b) of Section 54746. The children of pupils receiving services in the Cal-SAFE program pursuant to subdivision (b) of Section 54746 and attending juvenile court schools, county community schools, or community day schools shall be eligible for funding pursuant to paragraph (4) and no other provisions of this section.

(b) Funds allocated pursuant to paragraph (1) of subdivision (a) shall be maintained in a separate account and shall be expended only to provide the supportive services enumerated in subdivisions (b) of Section 54746, in service training as specified in subdivision (d) of

Section 54746, and expenditures enumerated in subdivision (d) of this section, to pupils enrolled in the Cal-SAFE program as determined pursuant to Section 54746.

(c) Funds allocated pursuant to paragraph (4) of subdivision (a) shall be maintained in a separate account and shall be expended only to provide developmentally appropriate child care and development services pursuant to subdivision (c) of Section 54746 and staff development of child development program staff pursuant to subdivision (d) of Section 54746 for children of teen parents enrolled in the Cal-SAFE program for the purpose of promoting the children's development comparable to age norms, access to health and preventive services, and enhanced school readiness.

(d) Funds generated pursuant to Section 2551.3, subdivision (b) of Section 54749.5, and this section shall be maintained in a separate account and shall be expended only to provide the services enumerated in Section 54746 and the following expenditures as defined by the California State School Accounting Manual:

(1) Expenditures defined as direct costs of instructional programs.

(2) Expenditures defined as documented direct support costs.

(3) Expenditures defined as allocated direct support costs.

(4) Expenditures for indirect charges.

(5) Expenditures defined as facility costs, including the costs of renting, leasing, lease purchase, remodeling, or improving buildings.

(e) Indirect costs shall not exceed the lesser of the approved indirect cost rate or 10 percent.

(f) Expenditures that represent contract payments to community-based organizations and other governmental agencies pursuant to paragraph (10) of subdivision (b) of Section 54745 for the operation of a Cal-SAFE program shall be included in the Cal-SAFE program account.

(g) To the extent permitted by federal law, any funding made available to a school district or county superintendent of schools shall be subject to all of the following conditions:

(1) The program is open to all eligible pupils without regard to any pupil's religious beliefs or any other factor related to religion.

(2) No religious instruction is included in the program.

(3) The space in which the program is operated is not used in any manner to foster religion during the time used for operation of the program.

(h) A school district or county superintendent of schools implementing a Cal-SAFE program may establish a claims process to recover federal funds available for any services provided that are Medi-Cal eligible.

(i) For purposes of serving pupils enrolled in the Cal-SAFE program in a summer school program or enrolled in a school program operating more than 180 days, eligibility for child care services pursuant to subdivision (c) of Section 54746 shall be determined by the parent's hours of enrollment and shall be for only those hours necessary to further the completion of the parent's educational program.

(j) To meet startup costs for the opening of child care and development sites, as defined in subdivision (ac) of Section 8208, and applicable regulations, a school district or county office of education may apply for a one-time 15-percent service level exemption within the amount appropriated in the annual Budget Act for the purposes of paragraph (4) of subdivision (a) for each site meeting the provision of subdivision (ac) of Section 8208. To the extent that Budget Act funding is insufficient to cover the full costs of Cal-SAFE child care, reimbursements to all participating programs shall be reduced on a pro rata basis. A school district or county office of education shall submit claims pursuant to this subdivision with other claims submitted pursuant to this section. Funding provided for startup costs shall be utilized for approvable startup costs enumerated in subdivision (a) of Section 8275.

(k) Notwithstanding any other provision of this article, its implementation of this article is contingent upon appropriations in the annual Budget Act for the purpose of its administration and evaluation by the State Department of Education.

(*l*) Notwithstanding any other provision of law, a charter school may apply for funding pursuant to this article and shall meet the requirements of this article to be eligible for funding pursuant to this section.

SEC. 50. Section 56026 of the Education Code is amended to read:

56026. ''Individuals with exceptional needs'' means those persons who satisfy all the following:

(a) Identified by an individualized education program team as a child with a disability, as that phrase is defined in subparagraph (A) of paragraph (3) of Section 1401 of Title 20 of the United States Code.

(b) Their impairment, as described by subdivision (a), requires instruction, services, or both, which cannot be provided with modification of the regular school program.

(c) Come within one of the following age categories:

(1) Younger than three years of age and identified by the district, the special education local plan area, or the county office as requiring intensive special education and services, as defined by the State Board of Education.

(2) Between the ages of three to five years, inclusive, and identified by the district, the special education local plan area, or the county office pursuant to Section 56441.11.

(3) Between the ages of five and 18 years, inclusive.

(4) Between the ages of 19 and 21 years, inclusive; enrolled in or eligible for a program under this part or other special education program prior to his or her 19th birthday; and has not yet completed his or her prescribed course of study or who has not met proficiency standards prescribed pursuant to Sections 51215 and 51216.

(A) Any person who becomes 22 years of age during the months of January to June, inclusive, while participating in a program under this part may continue his or her participation in the program for the remainder of the current fiscal year, including any extended school year program for individuals with exceptional needs established pursuant to regulations adopted by the State Board of Education, pursuant to Article 1 (commencing with Section 56100) of Chapter 2.

(B) Any person otherwise eligible to participate in a program under this part shall not be allowed to begin a new fiscal year in a program if he or she becomes 22 years of age in July, August, or September of that new fiscal year. However, if a person is in a year-round school program and is completing his or her individualized education program in a term that extends into the new fiscal year, then the person may complete that term.

(C) Any person who becomes 22 years of age during the months of October, November, or December while participating in a program under this act shall be terminated from the program on December 31 of the current fiscal year, unless the person would otherwise complete his or her individualized education program at the end of the current fiscal year.

(D) No school district, special education local plan area, or county office of education may develop an individualized education program that extends these eligibility dates, and in no event may a pupil be required or allowed to attend school under the provisions of this part beyond these eligibility dates solely on the basis that the individual has not met his or her goals or objectives.

(d) Meet eligibility criteria set forth in regulations adopted by the board, including, but not limited to, those adopted pursuant to Article 2.5 (commencing with Section 56333) of Chapter 4.

(e) Unless disabled within the meaning of subdivisions (a) to (d), inclusive, pupils whose educational needs are due primarily to limited English proficiency; a lack of instruction in reading or mathematics; temporary physical disabilities; social maladjustment; or environmental, cultural, or economic factors are not individuals with exceptional needs.

SEC. 51. Section 56029 of the Education Code is amended to read:

56029. ''Referral for assessment'' means any written request for assessment to identify an individual with exceptional needs made by any of the following:

(a) A parent or guardian of the individual.

(b) A teacher or other service provider of the individual.

(c) A foster parent of the individual, consistent with the limitations contained in federal law.

SEC. 52. Section 56044 of the Education Code is repealed.

SEC. 53. Article 3.7 (commencing with Section 56055) is added to Chapter 1 of Part 30 of the Education Code, to read:

Article 3.7. Foster Parents

56055. (a) (1) Except as provided in subdivision (b), a foster parent shall, to the extent permitted by federal law, including, but not limited to, Section 300.20 of Title 34 of the Code of Federal Regulations, have the rights related to his or her foster child's education that a parent has under Title 20 (commencing with Section 1400) of the United States Code and pursuant to Part 300 (commencing with Section 300.1) of Title 34 of the Code of Federal Regulations. The foster parent may represent the foster child for the duration of the foster parent-foster child relationship in matters relating to identification, assessment, instructional planning and development, educational placement, reviewing and revising an individualized education program, if necessary, and in all other matters relating to the provision of a free appropriate public education of the child. Notwithstanding any other provision of law, this representation shall include the provision of written consent to the individualized education program, including nonemergency medical services, mental health treatment services, and occupational or physical therapy services pursuant to this chapter. The foster parent may sign any consent relating to individualized education program purposes.

(2) A foster parent exercising rights relative to a foster child under this section may consult with the parent or guardian of the child to ensure continuity of health, mental health, or other services.

(b) A foster parent who had been excluded by court order from making educational decisions on behalf of a pupil shall not have the rights relative to the pupil set forth in subdivision (a).

SEC. 54. Section 56200 of the Education Code is amended to read:

56200. Each local plan submitted to the superintendent under this part shall contain all the following:

(a) Compliance assurances, including general compliance with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), and this part.

(b) A description of services to be provided by each district and county office. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction

appropriate to meet their needs as specified in their individualized education programs.

(c) (1) A description of the governance and administration of the plan, including the role of county office and district governing board members.

(2) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall specify the responsibilities of each participating county office and district governing board in the policymaking process, the responsibilities of the superintendents of each participating district and county in the implementation of the plan, and the responsibilities of district and county administrators of special education in coordinating the administration of the local plan.

(d) Copies of joint powers agreements or contractual agreements, as appropriate, for districts and counties that elect to enter into those agreements pursuant to subdivision (b) or (c) of Section 56195.1.

(e) An annual budget plan to allocate instructional personnel service units, support services, and transportation services directly to entities operating those services and to allocate regionalized services funds to the county office, responsible local agency, or other alternative administrative structure. The annual budget plan shall be adopted at a public hearing held by the district, special education local plan area, or county office, as appropriate. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during the fiscal year, and these revisions may be submitted to the superintendent as amendments to the allocations set forth in the plan. However, the revisions shall, prior to submission to the superintendent, be approved according to the policymaking process, established pursuant to paragraph (2) of subdivision (c).

(f) Verification that the plan has been reviewed by the community advisory committee and that the committee had at least 30 days to conduct this review prior to submission of the plan to the superintendent.

(g) A description of the identification, referral, assessment, instructional planning, implementation, and review in compliance with Chapter 4 (commencing with Section 56300).

(h) A description of the process being utilized to meet the requirements of Section 56303.

(i) A description of the process being utilized to meet the requirements of the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code.

(j) A description of the process being utilized to oversee and evaluate placements in nonpublic, nonsectarian schools and the method for ensuring that all requirements of each pupil's individualized education program are being met. This description shall include a

method for evaluating whether the pupil is making appropriate educational progress.

SEC. 55. Section 56207 of the Education Code is amended to read:

56207. (a) No educational programs and services already in operation in school districts or a county office of education pursuant to Part 30 (commencing with Section 56000) shall be transferred to another school district or a county office of education or from a county office of education to a school district unless the special education local plan area has developed a plan for the transfer which addresses, at a minimum, all of the following:

(1) Pupil needs.

(2) The availability of the full continuum of services to affected pupils.

(3) The functional continuation of the current individualized education programs of all affected pupils.

(4) The provision of services in the least restrictive environment from which affected pupils can benefit.

(5) The maintenance of all appropriate support services.

(6) The assurance that there will be compliance with all federal and state laws and regulations and special education local plan area policies.

(7) The means through which parents and staff were represented in the planning process.

(b) The date on which the transfer will take effect may be no earlier than the first day of the second fiscal year beginning after the date on which the sending or receiving agency has informed the other agency and the governing body or individual identified in subparagraph (A) of paragraph (12) of subdivision (a) of Section 56205, unless the governing body or individual identified in subparagraph (A) of paragraph (12) of subdivision (a) of Section 56205 unanimously approves the transfer taking effect on the first day of the first fiscal year following that date.

(c) If either the sending or receiving agency disagree with the proposed transfer, the matter shall be resolved by the alternative resolution process established pursuant to paragraph (5) of subdivision (b) of Section 56205.

(d) Notwithstanding Section 56208, this section shall apply to all special education local plan areas commencing on July 1, 1998, whether or not a special education local plan area has submitted a revised local plan for approval or has an approved revised local plan pursuant to Section 56836.03.

SEC. 56. Section 56366.1 of the Education Code is amended to read:

56366.1. (a) A nonpublic, nonsectarian school or agency that seeks certification shall file an application with the superintendent on forms

provided by the department and include the following information on the application:

(1) A description of the special education and designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian school certification.

(2) A description of the designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian agency certification.

(3) A list of appropriately qualified staff, a description of the credential, license, or registration that qualifies each staff member to render special education or designated instruction and services, and copies of their credentials, licenses, or certificates of registration with the appropriate state or national organization that has established standards for the service rendered.

(4) An annual operating budget.

(5) Affidavits and assurances necessary to comply with all applicable federal, state, and local laws and regulations which include criminal record summaries required of all nonpublic school or agency personnel having contact with minor children under Section 44237.

(b) If the applicant operates a facility or program on more than one site, each site shall be certified.

(c) If the applicant is part of a larger program or facility on the same site, the superintendent shall consider the effect of the total program on the applicant. A copy of the policies and standards for the nonpublic, nonsectarian school or agency and the larger program shall be available to the superintendent.

(d) Prior to certification, the superintendent shall conduct an onsite review of the facility and program for which the applicant seeks certification. The superintendent may be assisted by representatives of the special education local plan area in which the applicant is located and a nonpublic, nonsectarian school or agency representative who does not have a conflict of interest with the applicant. The superintendent shall conduct an additional onsite review of the facility and program within four years of the certification effective date, unless the superintendent conditionally certifies the school or agency or unless the superintendent receives a formal complaint against the school or agency. In the latter two cases, the superintendent shall conduct an onsite review at least annually.

(e) The superintendent shall make a determination on an application within 120 days of receipt of the application and shall certify, conditionally certify, or deny certification to the applicant. If the superintendent fails to take one of these actions within 120 days, the applicant is automatically granted conditional certification for a period terminating on August 31, of the current school year. If certification is denied, the superintendent shall provide reasons for the denial. The

superintendent may certify the school or agency for a period of not longer than four years.

(f) Certification becomes effective on the date the nonpublic, nonsectarian school or agency meets all the application requirements and is approved by the superintendent. Certification may be retroactive if the school or agency met all the requirements of this section on the date the retroactive certification is effective. Certification expires on December 31 of the terminating year.

(g) The superintendent shall annually review the certification of each nonpublic, nonsectarian school and agency. For this purpose, a certified school or agency shall annually update its application between August 1 and October 31, unless the board grants a waiver pursuant to Section 56101. The superintendent may conduct an onsite review as part of the annual review.

(h) The superintendent may monitor a nonpublic, nonsectarian school or agency onsite at any time without prior notice when there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child. The superintendent shall document the concern and submit it to the nonpublic, nonsectarian school or agency at the time of the onsite monitoring. The superintendent shall require a written response to any noncompliance or deficiency found.

(i) (1) Notwithstanding any other provision of law, the superintendent may not certify a nonpublic, nonsectarian school or agency that proposes to initiate or expand services to pupils currently educated in the immediate prior fiscal year in a juvenile court program, community school pursuant to Section 56150, or other nonspecial education program, including independent study or adult school, or both, unless the nonpublic, nonsectarian school or agency notifies the county superintendent of schools and the special education local plan area in which the proposed new or expanded nonpublic, nonsectarian school or agency is located of its intent to seek certification.

(2) The notification shall occur no later than the December 1 prior to the new fiscal year in which the proposed or expanding school or agency intends to initiate services. The notice shall include the following:

(A) The specific date upon which the proposed nonpublic, nonsectarian school or agency is to be established.

(B) The location of the proposed program or facility.

(C) The number of pupils proposed for services, the number of pupils currently served in the juvenile court, community school, or other nonspecial education program, the current school services including special education and related services provided for these pupils, and the specific program of special education and related services to be provided under the proposed program.

(D) The reason for the proposed change in services.

(E) The number of staff that will provide special education and designated instruction and services and hold a current valid California credential or license in the service rendered or certificate of registration to provide occupational therapy.

(3) In addition to the requirements in subdivisions (a) through (e), inclusive, the superintendent shall require and consider the following in determining whether to certify a nonpublic, nonsectarian school or agency as described in this subdivision:

(A) A complete statement of the information required as part of the notice under paragraph (1).

(B) Documentation of the steps taken in preparation for the conversion to a nonpublic, nonsectarian school or agency, including information related to changes in the population to be served and the services to be provided pursuant to each pupil's individualized education program.

(4) Notwithstanding any other provision of law, the certification becomes effective no earlier than July 1, if the school or agency provided the notification required pursuant to paragraph (1).

(j) The school or agency shall be charged a reasonable fee for certification. The superintendent may adjust the fee annually commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:

| | | |
|---|---|---|
| (1) | 1– 5 pupils | $ 150 |
| (2) | 6–10 pupils | 250 |
| (3) | 11–24 pupils | 500 |
| (4) | 25–75 pupils | 750 |
| (5) | 76 pupils and over | 1,000 |

The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the superintendent. The superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall be refunded if the application is withdrawn or is denied by the superintendent.

(k) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services utilizing staff who hold, or are receiving training under the supervision of staff who hold, a current valid California credential or license in the service rendered shall be eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside of California that

employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

(2) Nothing in this subdivision restricts student teachers, interns, or other staff who are enrolled in training programs that lead to a license or credential that authorize the holder to render services to special education pupils and who are under the direct supervision of a staff member who holds a current valid California credential, license, or certificate of registration document.

(3) A nonpublic, nonsectarian school or agency that employs only persons who hold a valid California credential authorizing substitute teaching pursuant to Section 56060 shall not be certified. At least one full-time person with a current valid California credential, license, or certificate of registration in the area of service to be rendered, or a current valid credential, license, or certificate of registration for appropriate special education and related services rendered that is required in another state, shall be required for purposes of certification under subdivision (d) of Section 56366.

(4) A nonpublic, nonsectarian school or agency that employs persons holding a valid emergency credential shall document efforts of recruiting appropriately credentialed, licensed, or registered personnel for the special education and related services rendered as a condition of renewing certification.

(5) Not later than August 1, 1997, the State Board of Education shall issue emergency regulations to implement the subdivision. The emergency regulations shall be developed by the Superintendent of Public Instruction, in collaboration with the Commission on Teacher Credentialing and other public agencies responsible for issuing licenses or certificates of registration to individuals providing designated instruction and services to individuals with exceptional needs. The regulations also shall be developed in consultation with statewide organizations representing public and nonpublic, nonsectarian schools or agencies that provide special education and designated instruction and services. The emergency regulations shall include, but shall not be necessarily limited to, all of the following:

(A) Requirements for minimum personnel qualifications for credentials to provide special education to individuals with exceptional needs issued by the Commission on Teacher Credentialing pursuant to this code and applicable federal laws.

(B) Requirements for minimum personnel qualifications for licenses or certifications of registration to provide designated instruction and services to individuals with exceptional needs issued by the California Board of Medical Quality Assurance, the Board of Behavioral Science Examiners, the Board of Consumer Affairs, and other state licensure

agencies that are authorized under the Business and Professions Code to grant licenses or certificates of registration that may be applicable to the provision of designated instruction and services to individuals with exceptional needs.

(C) Requirements for personnel who are not licensed or credentialed to provide special education or designated instruction and services to pupils under the supervision of a credentialed or licensed professional in the service rendered, including direct and nondirect supervision requirements established by this code and the Business and Professions Code, and related regulations.

(D) Requirements for the certification of nonpublic, nonsectarian schools and agencies to provide individual and group designated instruction and services to individuals with exceptional needs.

(6) For purposes of the Administrative Procedure Act, the Legislature declares that the regulations issued pursuant to paragraph (5) shall be deemed to be in response to an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare by ensuring that all personnel providing special education and designated instruction and services to individuals with exceptional needs are appropriately qualified to provide the services specified by a pupil's individualized education program.

(*l*) The superintendent shall establish guidelines for the implementation of subdivision (a) in consultation with statewide organizations representing providers of special education and designated instruction and services. The State Board of Education shall approve the standards not later than August 1, 1997.

(m) (1) By September 30, 1998, the superintendent shall, in consultation with statewide organizations representing providers of special education and designated instruction and services, develop the procedures, methods, and areas of certification, including, but not limited to, the following:

(A) Information required for purposes of the application specified in subdivision (a).

(B) Procedures for conducting onsite reviews of the nonpublic, nonsectarian school or agency program.

(C) Provisions specific to minimum staff qualifications to provide special education and designated instruction and services that are required for certification.

(D) Provisions specific to the provision of special education and related services to individuals with exceptional needs from birth to preschool.

(2) The board shall issue as rules and regulations the procedures, methods, and areas of certification developed pursuant to paragraph (1).

(n) In addition to meeting the standards adopted by the board, a nonpublic, nonsectarian school or agency shall provide written assurances that it meets all applicable standards relating to fire, health, sanitation, and building safety.

SEC. 57. Section 56391 of the Education Code is amended to read:

56391. An individual with exceptional needs who meets the criteria for a certificate or document described in Section 56390 shall be eligible to participate in any graduation ceremony and any school activity related to graduation in which a pupil of similar age without disabilities would be eligible to participate. The right to participate in graduation ceremonies does not equate a certificate or document described in Section 56390 with a regular high school diploma.

SEC. 58. Section 56836.02 of the Education Code is amended to read:

56836.02. (a) The superintendent shall apportion funds from Section A of the State School Fund to districts and county offices of education in accordance with the allocation plan adopted pursuant to Section 56836.05, unless the allocation plan specifies that funds be apportioned to the administrative unit of the special education local plan area. If the allocation plan specifies that funds be apportioned to the administrative unit of the special education local plan area, the administrator of the special education local plan area shall, upon receipt, distribute the funds in accordance with the method adopted pursuant to subdivision (i) of Section 56195.7. The allocation plan shall, prior to submission to the superintendent, be approved according to the local policymaking process established by the special education local plan area.

(b) The superintendent shall apportion funds for regionalized services and program specialists from Section A of the State School Fund to the administrative unit of each special education local plan area. Upon receipt, the administrator of a special education local plan area shall direct the administrative unit of the special education local plan area to distribute the funds in accordance with the budget plan adopted pursuant to paragraph (1) of subdivision (b) of Section 56205.

SEC. 59. Section 60061 of the Education Code is amended to read:

60061. (a) A publisher or manufacturer shall do all of the following:

(1) Furnish the instructional materials offered by the publisher at a price in this state that, including all costs of transportation to that place, does not exceed the lowest price at which the publisher offers those instructional materials for adoption or sale to any state or school district in the United States.

(2) Automatically reduce the price of those instructional materials to any governing board to the extent that reductions are made elsewhere in the United States.

(3) Provide any instructional materials free of charge in this state to the same extent as that received by any state or school district in the United States.

(4) Guarantee that all copies of any instructional materials sold in this state are at least equal in quality to the copies of those instructional materials that are sold elsewhere in the United States, and are kept revised, free from all errors, and up to date as may be required by the state board.

(5) Not in any way, directly or indirectly, become associated or connected with any combination in restraint of trade in instructional materials, or enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of instructional materials for use in this state.

(6) Maintain a representative, office, or depository in the State of California or arrange with an independently owned and operated depository in the State of California to receive and fill orders for instructional materials.

(7) Provide to the state, at no cost, computer files or other electronic versions of each state-adopted literary title and the right to transcribe, reproduce, modify, and distribute the material in Braille, large print if the publisher does not offer a large print edition, recordings, American Sign Language videos for the deaf, or other specialized accessible media exclusively for use by pupils with visual disabilities or other disabilities that prevent use of standard instruction materials. Computer files or other electronic versions of instructional materials adopted for kindergarten and grades 1 to 8, inclusive, and for grades 9 to 12, inclusive, shall be provided within 30 days of a request by the state as needed for the following purposes:

(A) Computer files or other electronic versions of literary titles shall maintain the structural integrity of the standard instruction materials, be compatible with commonly used Braille translation and speech synthesis software, and include corrections and revisions as may be necessary.

(B) Computer files or other electronic versions of nonliterary titles, including science and mathematics, shall be provided when technology is available to convert those materials to a format that maintains the structural integrity of the standard instructional materials and is compatible with Braille translation and speech synthesis software.

(b) Upon the willful failure of the publisher or manufacturer to comply with the requirements of this section, the publisher or manufacturer be liable to the governing board in the amount of three

times the total sum that the publisher or manufacturer was paid in excess of the price required under paragraphs (1), (2), and (5) of subdivision (a), and in the amount of three times the total value of the instructional materials and services that the governing board is entitled to receive free of charge under subdivision (a).

SEC. 60. Section 60240 of the Education Code is amended to read:

60240. (a) The State Instructional Materials Fund is hereby continued in existence in the State Treasury. The fund shall be a means of annually funding the acquisition of instructional materials as required by the Constitution of the State of California. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the State Department of Education without regard to fiscal years for carrying out the purposes of this part. It is the intent of the Legislature that the fund shall provide for flexibility of instructional materials.

(b) The State Department of Education shall administer the fund under policies established by the state board.

(c) (1) The state board shall encumber part of the fund to pay for accessible instructional materials to accommodate pupils who are visually impaired pursuant to Sections 60312 and 60313 or have other disabilities and are unable to access the general curriculum.

(2) The state board may encumber funds, in an amount not to exceed two hundred thousand dollars ($200,000), for replacement of instructional materials, obtained by a school district with its allowance that are lost or destroyed by reason of fire, theft, natural disaster, or vandalism.

(3) The state board may encumber funds for the costs of warehousing and transporting instructional materials it has acquired.

SEC. 61. Section 60313 of the Education Code is amended to read:

60313. (a) The Superintendent of Public Instruction shall maintain a central clearinghouse-depository and duplication center for the design, production, modification, and distribution of Braille, large print, special recordings, and other accessible versions of instructional materials for use by pupils with visual impairments or other disabilities who are enrolled in the public schools of California.

(b) Assistive devices placed in the depository shall consist of items designed for use by pupils with visual impairments.

(c) The instructional materials in specialized media shall be available, in a manner determined by the State Board of Education, to other pupils with disabilities enrolled in the public schools of California who are unable to progress in the general curriculum using conventional print copies of textbooks and other study materials.

(d) The specialized textbooks, reference books, recordings, study materials, tangible apparatus, equipment, and other similar items shall

be available for use by students with visual impairments enrolled in the public community colleges, the California State University, and the University of California.

SEC. 62. Section 60400 of the Education Code is amended to read:

60400. The governing board of each school district maintaining one or more high schools shall adopt instructional materials for use in the high schools under its control. Only instruction materials of those publishers who comply with the requirements of Article 3 (commencing with Section 60040) and Article 4 (commencing with Section 60060) of Chapter 1 of this part and of Section 60226 may be adopted by the district board.

SEC. 63. Section 63051 of the Education Code is amended to read:

63051. (a) The Superintendent of Public Instruction, with the approval of the State Board of Education, shall select not more than 75 school districts that apply to participate in the pilot project established pursuant to this chapter.

(b) Each school district that applies to participate in the pilot project established pursuant to this chapter shall submit a project budget with the application. The project budget shall specify how categorical program funding will be allocated or reallocated under the pilot project. No school district may participate in the pilot project unless the district's proposed plan is approved by the State Board of Education.

(c) The superintendent shall determine the 25 largest school districts in the state on the basis of pupil enrollment as of October 1999. From this list, the superintendent shall select no more than one school district from the largest five school districts and no more than four school districts from the remaining 20 largest school districts to participate in the pilot project. If more than one of the largest five school districts applies, or more than four school districts from the remaining 20 school districts applies, the superintendent shall select those school districts to participate in the pilot project by lottery.

(d) After making selections pursuant to subdivision (b), the superintendent may select up to 70 additional participants from applicant school districts. The superintendent shall ensure that participating school districts are broadly representative of the state, including small school districts, urban school districts, rural school districts, suburban school districts, elementary school districts, high school districts, and unified school districts.

(e) A school district approved for participation shall have a minimum of five years of expenditure flexibility as described in this chapter commencing on and after the 2000–01 fiscal year.

SEC. 64. Section 69995 of the Education Code is amended to read:

69995. (a) It is the intent of the Legislature in enacting this article to encourage high school pupils to study hard and master the California

academic content standards adopted by the State Board of Education and to excel in mathematics and the sciences.

(b) The Scholarshare Investment Board, known hereafter as ''the board,'' unless otherwise specified, shall administer the programs authorized by this article, including the adoption of rules and regulations as provided by subdivision (d) of Section 69981, and in so doing shall cooperate with the State Department of Education, the Treasurer's office, the Controller, the college board, private test publishing companies, and other entities necessary to ensure the accurate and timely identification and reporting of award recipients, granting of awards, and administration of these programs. The State Department of Education shall ensure that the contract with the test publisher selected pursuant to Section 60642 reflects the reporting requirements of this article and that the publisher meets those requirements.

(c) The definitions in Section 69980 apply to this article.

(d) To be eligible for an award pursuant to the programs authorized by this article, a pupil shall meet all of the following eligibility criteria:

(1) Take the achievement test authorized by Section 60640 in grade 9, 10, or 11.

(2) Have been enrolled at a California public school for at least 12 consecutive months immediately preceding the administration of the achievement test specified in paragraph (1), as evidenced by his or her school records obtained pursuant to administration of the program authorized by this article.

(3) Take both of the following:

(A) The nationally normed reading and mathematics portions of the achievement test, as specified by the State Board of Education and authorized by Section 60640.

(B) The English/language arts and mathematics portions of the achievement test authorized by Section 60640 that are augmented and aligned, pursuant to subdivision (f) of Section 60644, with the California academic content standards, unless otherwise exempted by action of the State Board of Education.

(e) Awards made pursuant to this article shall be an entitlement to pupils identified as qualifying for an award pursuant to this article. The State Department of Education shall annually provide the board with an estimate of the number of pupils with qualifying scores by October 15. Upon receipt of the estimate on or before October 15, the board shall deposit a single amount equal to the sum of the amounts of the awards earned by qualifying pupils into a single account separate and apart from all participant accounts within the Golden State Scholarshare Trust in the names of those pupils. Scholarship assets may not be commingled for investment purposes with participant accounts. Notwithstanding the provisions of Section 69991, all assets of the scholarship account, while

part of the Golden State Scholarshare Trust, are owned by the state until used to pay the qualified higher education expenses of the beneficiary.

(f) The entity contracted for the assessment authorized by Section 60640 shall annually, on or before January 15, provide the board a digital report that contains a final list of pupils identified as qualifying for an award pursuant to this article. To ensure that this digital report is accurate and is prepared on a timely basis, all corrections and revisions to the data that is used to prepare the digital report shall be submitted to the State Department of Education on or before November 15 of the preceding year.

(g) Deposits made to this account shall be invested according to the guidelines established by the board pursuant to the requirements of state and federal law. The deposits shall be invested through a guaranteed funding agreement with an interest rate to be declared annually by the investment manager, or through another investment determined by the board to be equally or more secure. For purposes of this section, a guaranteed funding agreement is an approved investment vehicle for state-owned scholarship funds.

(h) Nothing in this article shall be construed to prevent any pupil from seeking private or other funding sources to supplement the amount of any funds awarded pursuant to this article.

(i) Award recipients shall be informed that the programs authorized by this article do not guarantee in any way that higher education expenses will be equal to projections and estimates provided by the board, nor that the claimant will be guaranteed any of the following:

(1) Admission to an institution of higher education.

(2) If admitted, a determination that the award recipient is a resident for tuition purposes by the institution of higher education.

(3) Continued attendance at the institution of higher education following admission.

(4) Graduation from the institution of higher education.

(5) Savings sufficient to fully cover all qualified education expenses of attending an institution of higher education.

(j) Notwithstanding any other provision of state law, any funds awarded pursuant to this article shall augment and not supplant student financial aid from other public sources, inclusive of calculating eligibility for student financial aid.

(k) Notwithstanding any other provision of law, the awards and earnings claimed by a recipient pursuant to this article shall be exempt from state income tax liability.

(*l*) To the extent allowed under federal law, any funds awarded pursuant to this article may not be considered in the federal needs analysis for student financial aid, as they are an asset of the state until used for the payment of qualified higher education expenses.

SEC. 65. Section 69996 of the Education Code is amended to read:

69996. (a) Awards and the investment earnings accumulated pursuant to this article shall be available for the payment of qualified higher education expenses, as defined in subdivisions (g) and (*l*) of Section 69980. Pursuant to its authority under subdivision (d) of Section 69981, the board shall adopt rules and regulations to ensure that funds authorized by this chapter are disbursed directly to the institution of higher education indicated by an award recipient on his or her form.

(b) Funds authorized by this article are nontransferable to any other person or entity and may only be used for the purposes stated herein. No funds authorized by this article may be pledged as collateral for any loan.

(c) (1) Awards and their investment earnings invested in the Scholarshare Trust shall remain assets of, and owned by, the state until used for the payment of qualified higher education expenses as authorized by this section, and shall remain invested in the Scholarshare Trust until they are used for the purposes authorized by this section or until the recipient achieves the age of 30, whichever occurs first. If, due to death or disability, an award recipient is unable to attend an institution of higher education before reaching the age of 30 and the scholarship funds have not already been used for purposes of this article, the scholarship funds designated for the recipient shall revert to the General Fund.

(2) Any funds not utilized within this time period shall revert to the General Fund after the payment of any amount determined to be due the federal government as a result of the reversion.

(d) The board shall establish rules and regulations for an award recipient to claim the funds deposited and accrued in the Scholarshare Trust in the name of that recipient, including, but not limited to, the claim process, qualified distributions, necessary documentation, deadlines for submission of claims for awards, the granting of awards, appeals procedures, and any forfeiture procedures. The board has no authority to validate testing methods or test scores contemplated by this article and shall not make any determination regarding the validity of these testing methods or test scores.

(e) The board shall request each award recipient to voluntarily report personal information, including, but not limited to, ethnicity, gender, and family income. The board shall compile and retain this information in a confidential manner so that the personal information of any award recipient is not publicly disclosed in a manner that may be associated with particular individuals.

(f) Within the annual report required pursuant to Section 69989, the board shall also include, at a minimum, the number of pupils with qualifying scores for an award pursuant to this article, the number of Governor's Scholars awards claimed and disbursed, the rate of return

earned by the funds authorized by this article in the previous five fiscal years, the amount of funds expended pursuant to this article in the previous five fiscal years, and a list, by high school, of the number of awards granted pursuant to the program authorized by this article. To the extent that information is available and can be disclosed without allowing the information to be associated with particular individuals, the board shall include information on the ethnicity, gender, and family income of award recipients.

SEC. 66. Section 69997 of the Education Code is amended to read:

69997. (a) The Governor's Scholars Program is hereby established. This program shall provide a scholarship of one thousand dollars ($1,000) to each public high school pupil who, on or after January 1, 2000, demonstrates high academic achievement on the achievement test authorized by Section 60640. Pupils receiving a scholarship pursuant to this section shall be known as ''Governor's Scholars.''

(b) Until the State Board of Education determines that the English language arts and mathematics portions of the statewide pupil achievement test authorized by Section 60640 have been aligned with the California academic content standards, and the standards aligned test is both valid and reliable for high stakes purposes, a pupil shall earn a scholarship pursuant to this section by satisfying either of the following criteria:

(1) Attaining a combined score on the reading and mathematics portions of the nationally normed achievement test adopted by the State Board of Education pursuant to Section 60642 that places him or her in the top 5 percent of test takers in his or her grade level statewide. A pupil attending any California public school, including those specified in subdivision (g) of Section 52052, is eligible to receive an award pursuant to this paragraph.

(2) Attaining a combined score on the nationally normed reading and mathematics portions of the achievement test adopted by the State Board of Education pursuant to Section 60642 that places him or her in the top 10 percent of test takers in his or her grade level in the comprehensive public high school attended by that pupil. When calculating the top 10 percent, the result shall be rounded to the nearest whole integer for the purpose of determining the number of awards in any high school. If this calculation results in a number of pupils less than one in any high school, there shall be one award at that school.

(c) Pupils earning an award pursuant to subdivision (b) may receive only one award in any given year. However, a pupil may earn a lifetime maximum of three awards by meeting the requirements of this section in each of grades 9, 10, and 11.

(d) Once the State Board of Education has determined that the English language arts and mathematics portions of the statewide pupil

achievement test authorized by Section 60640 have been aligned with the California academic content standards, and the standards aligned test is both valid and reliable for high stakes purposes, that test shall be used as the basis for the award of scholarships pursuant to subdivision (a).

(e) (1) For the purposes of this section, a ''comprehensive high school'' includes both of the following:

(A) The California Schools for the Deaf established pursuant to Chapter 1 (commencing with Section 59000) of Part 32.

(B) The California School for the Blind established pursuant to Chapter 2 (commencing with Section 59100) of Part 32.

(2) A pupil attending the California Schools for the Deaf or the California School for the Blind who met the criteria for an award pursuant to this section for tests taken in year 2000 shall receive an award for that year.

SEC. 67. Section 69998 of the Education Code is amended to read:

69998. (a) The Governor's Distinguished Mathematics and Science Scholars Program is hereby established. This program shall provide a scholarship of two thousand five hundred dollars ($2,500) for public high school pupils who demonstrate specified high academic achievement in mathematics and the sciences. Pupils receiving a scholarship pursuant to this section shall be known as ''Governor's Mathematics and Science Scholars.''

(b) In addition to the criteria specified in subdivision (d) of Section 69995, a pupil shall satisfy the following to be eligible to receive a scholarship pursuant to this section:

(1) Earn an award pursuant to the program authorized by Section 69997.

(2) Take an advanced placement calculus examination offered by the college board.

(3) Take any one of the advanced placement biology, chemistry, or physics examinations offered by the college board.

(c) If the provisions of subdivision (d) apply, then paragraphs (2) and (3) of subdivision (b) shall be effective only as specified in subdivision (d).

(d) (1) If the pupil's school offers an advanced placement course in a subject identified in subdivision (b), only the advanced placement examination in that subject shall be allowed for the purposes of determining eligibility for an award pursuant to this section. If a pupil's school does not offer an advanced placement course in a subject identified in subdivision (b), he or she may take instead the Golden State Examination, as authorized by Article 5 (commencing with Section 60650) of Chapter 5 of Part 33, in that subject in order to be eligible to receive a scholarship pursuant to this section. Should there appear to be

a conflict between this subdivision and any other subdivision related to this program, this subdivision shall be controlling.

(2) For the science test, the Golden State Examination in second-year coordinated science may be used in place of any other Golden State Examination in science for the purposes of this subdivision.

(3) For the mathematics test, only the High School Mathematics Golden State Examination may be used for the purposes of this subdivision.

(e) Eligible pupils shall earn a scholarship pursuant to this section by satisfying all of the following requirements:

(1) Attaining a score of five, on the advanced placement calculus AB examination, or attaining a score of four or five on the higher-level advanced placement calculus BC examination.

(2) Attaining a score of five on any one of the advanced placement biology, chemistry, or physics B examinations, or attaining a score of four or five on both of the advanced placement physics C (mechanics or electricity and magnetism) examinations.

(3) If a pupil is eligible for an award pursuant to paragraph (4) of subdivision (b), he or she must attain a score of six on the appropriate Golden State Examination, as described in subdivision (d).

(f) As an alternative to the examination requirements set forth in subdivisions (b), (c), (d), and (e), a pupil may be eligible to receive a scholarship pursuant to this section for performance in science and mathematics examinations that are part of the International Baccalaureate Program. The State Board of Education shall review and designate those International Baccalaureate examinations that are equivalent to the advanced placement tests or Golden State Examinations for which pupils may receive scholarships pursuant to this section. The State Board of Education shall also designate the score on International Baccalaureate examinations that is equivalent to the score required on advanced placement tests or Golden State Examinations in order to receive a scholarship.

(g) The State Board of Education may modify this list of examinations as necessary to reflect additions and deletions to the series of examinations offered by the college board for advanced placement courses. The State Board of Education may also determine the relative rigor of any new examinations added to the list and whether those examinations should require a score of four or five if the added examinations and qualifying scores reflect at least the same level of rigor as the advanced placement examinations specified in this section.

(h) Test scores earned before receiving an award pursuant to the program authorized by Section 69997 may be used to satisfy the requirements of subdivision (d), even if these scores are earned before January 1, 2000. A pupil may not claim an award pursuant to this section

until the pupil has earned and successfully claimed an award pursuant to the program authorized by Section 69997.

(i) A pupil may receive a maximum of one award pursuant to the program established by this section.

(j) Subdivisions (c) and (d) and paragraph (4) of subdivision (b), subdivision (c), and paragraph (3) of subdivision (e) shall become inoperative, and are repealed as of December 31, 2001.

SEC. 68. Section 78300 of the Education Code is amended to read:

78300. (a) The governing board of any community college district may, without the approval of the Board of Governors of the California Community Colleges, establish and maintain community service classes in civic, vocational, literacy, health, homemaking, technical and general education, including, but not limited to, classes in the fields of visual and performing arts, handicraft, science, literature, nature study, nature contacting, aquatic sports and athletics. These classes shall be designed to provide instruction and to contribute to the physical, mental, moral, economic, or civic development of the individuals or groups enrolled therein.

(b) Community service classes shall be open for the admission of adults and of those minors as in the judgment of the governing board may profit therefrom.

(c) Governing boards shall not expend General Fund moneys to establish and maintain community service classes. Governing boards may charge students enrolled in community service classes a fee not to exceed the cost of maintaining community service classes, or may provide instruction in community service classes for remuneration by contract, or with contributions or donations of individuals or groups. The board of governors shall adopt guidelines defining the acceptable reimbursable costs for which a fee may be charged and shall collect data and maintain uniform accounting procedures to ensure that General Fund moneys are not used for community services classes.

SEC. 69. Section 89230 of the Education Code is amended to read:

89230. ''Instructionally related activities'' means those activities and laboratory experiences that are at least partially sponsored by an academic discipline or department and that are, in the judgment of the president of a particular campus, with the approval of the trustees, integrally related to its formal instructional offerings.

Activities that are considered to be essential to a quality educational program and an important instructional experience for any student enrolled in the respective program may be considered instructionally related activities.

Instructionally related activities include, but are not limited to, all of the following:

(a) Intercollegiate athletics: costs that are necessary for a basic competitive program including equipment and supplies and scheduled travel, not provided by the state. Athletic grants should not be included.

(b) Radio, television, film: costs related to the provisions of basic ''hands-on'' experience not provided by the state. Purchase or rental of films as instructional aids shall not be included.

(c) Music and dance performance: costs to provide experience in individual and group performance, including recitals, before audiences and in settings sufficiently varied to familiarize students with the performance facet of the field.

(d) Theatre and musical productions: basic support of theatrical and operatic activities sufficient to permit experience not only in actual performance, but in production, direction, set design, and other elements considered a part of professional training in these fields.

(e) Art exhibits: support for student art shows given in connection with degree programs.

(f) Publications: the costs to support and operate basic publication programs including a periodic newspaper and other laboratory experience basic to journalism and literary training. Additional publications designed primarily to inform or entertain shall not be included.

(g) Forensics: activities designed to provide experience in debate, public speaking, and related programs, including travel required for a competitive debate program.

(h) Other activities: activities associated with other instructional areas that are consistent with purposes included in the above may be added as they are identified.

Pursuant to this section and other provisions of this code, the Chancellor of the California State University shall develop a program of fiscal support and shall consult with the California State Student Association, the Academic Senate, and the Chancellor's Council of Presidents regarding the program.

This section shall not become operative unless funds are appropriated to meet the instructionally related needs of the campuses of the California State University.

SEC. 70. Section 99223 of the Education Code is amended to read:

99223. The Regents of the University of California are requested to jointly develop with the Trustees of the California State University and the independent colleges and universities, the Algebra Academies Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) In July 2000, the University of California and its institutes' partners shall commence instruction for 1,000 participants who either provide direct instruction in prealgebra and algebra to pupils in grades 7 and 8, or supervise beginning teachers of algebra.

(b) (1) The institutes shall provide instruction for school teams from each participating school. These school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but are not necessarily limited to, all of the following:

(A) Schools whose pupils' scores on the mathematics portion of the achievement test authorized by Section 60640 are at or below the 40th percentile.

(B) Teams composed of a large percentage of members of their schools' mathematics departments, which may include the chair of that department.

(C) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced price meals.

(D) Schools with a high number of beginning and noncredentialed teachers.

(E) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools that meet the criteria described in subparagraph (D) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of prealgebra and algebra in a manner consistent with the standard for a comprehensive mathematics instruction program that is research-based and shall include all of the following components:

(A) Instruction in prealgebra and algebra that will enhance the ability of teachers to prepare pupils for the achievement test authorized pursuant to Section 60640 and the high school exit examination authorized pursuant to Section 60850.

(B) Ongoing diagnostic techniques that inform teaching and assessment.

(C) Early intervention techniques for pupils experiencing difficulty in prealgebra and algebra.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on mathematics for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.

(d) Each participant who satisfactorily completes an institute authorized by this section shall receive a stipend, commensurate with the duration of the institute, of not less than one thousand dollars ($1,000)

nor more than two thousand dollars ($2,000), as determined by the University of California.

(e) In order to provide maximum access, the institutes shall be offered on multiple university and college campuses that are widely distributed throughout the state. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours during the summer or during an intersession break, and shall be supplemented, during the following school year, with no fewer than the equivalent of five additional days of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in prealgebra and algebra.

(f) Teachers attending the institutes authorized by this section shall, as a condition of attendance and subsequent to that attendance, serve as instructors in the program authorized by Chapter 18 (commencing with Section 53091) of Part 28. These teachers shall continue to receive followup professional development during the same time period they are providing instruction. Followup professional development during this time period shall occur outside of instructional time.

(g) It is the intent of the Legislature that a local education agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of mathematics course requirements to an enrolled candidate who satisfactorily completes an Algebra Academies Professional Development Institute if the institute has been certified by the Commission on Teacher Credentialing as meeting mathematics standards.

SEC. 71. Section 3540.2 of the Government Code is amended to read:

3540.2. (a) A school district that has a qualified or negative certification pursuant to Section 42131 of the Education Code shall allow the county office of education in which the school district is located at least six working days to review and comment on any proposed agreement made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The school district shall provide the county superintendent of schools with all information relevant to yield an understanding of the financial impact of that agreement.

(b) The Superintendent of Public Instruction shall develop a format for use by the appropriate parties in generating the financial information required pursuant to subdivision (a).

(c) The county superintendent of schools shall notify the school district publicly within those six days if, in his or her opinion, the agreement reviewed pursuant to subdivision (a) would endanger the fiscal well-being of the school district.

(d) A school district shall provide the county superintendent of schools, upon request, with all information relevant to provide an understanding of the financial impact of any final collective bargaining agreement reached pursuant to Section 3543.2.

(e) A county office of education that has a qualified or negative certification pursuant to Section 1240 of the Education Code shall allow the Superintendent of Public Instruction at least six working days to review and comment on any proposed agreement made between the exclusive representative and the public school employer, or designated representatives of the employer, pursuant to this chapter. The county superintendent of schools shall provide the Superintendent of Public Instruction with all information relevant to yield an understanding of the financial impact of that agreement. The Superintendent of Public Instruction shall notify the county superintendent of schools publicly within those six days if, in his or her opinion, the proposed agreement would endanger the fiscal well-being of the county office.

SEC. 72. Section 4420.5 of the Government Code is amended to read:

4420.5. (a) Section 4420 does not apply to any construction or renovation project undertaken by a school district or community college district.

(b) The district may use owner-controlled or wrap-up insurance with regard to a construction or renovation project if the district makes the following determinations:

(1) Prospective bidders, including contractors and subcontractors, meet minimum occupational safety and health qualifications established to bid on the project. The evaluation of prospective bidders shall be based on consideration of the following factors:

(A) Serious and willful violations of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, by a contractor or subcontractor during the past five-year period.

(B) The contractor's or subcontractor's workers' compensation experience modification factor.

(C) A contractor's or subcontractor's injury prevention program instituted pursuant to Section 3201.5 or 6401.7 of the Labor Code.

(2) The use of owner-controlled or wrap-up insurance will minimize the expenditure of public funds on the project in conjunction with the exercise of appropriate risk management.

(c) For purposes of this section, ''owner-controlled or wrap-up insurance'' means a series of insurance policies issued to cover all of the contractors and subcontractors on a given project for purposes of general liability and workers' compensation.

(d) Any use of owner-controlled or wrap-up insurance pursuant to this section shall be subject to paragraphs (3) to (6), inclusive, of

subdivision (b) of Section 4420 and subdivisions (c) and (d) of that section.

SEC. 73. Section 6516.6 of the Government Code is amended to read:

6516.6. (a) Notwithstanding any other provision of law, a joint powers agency established pursuant to a joint powers agreement in accordance with this chapter may issue bonds pursuant to Article 2 (commencing with Section 6540) or Article 4 (commencing with Section 6584), in order to purchase obligations of local agencies or make loans to local agencies, which moneys the local agencies are hereby authorized to borrow, to finance the local agencies' unfunded actuarial pension liability or to purchase, or to make loans to finance the purchase of, delinquent assessments or taxes levied on the secured roll by the local agencies, the county, or any other political subdivision of the state. Notwithstanding any other provision of law, including Section 53854, the local agency obligations or loans, if any, shall be repaid in the time, manner and amounts, with interest, security, and other terms as agreed to by the local agency and the joint powers authority.

(b) Notwithstanding any other provision of law, a joint powers authority established pursuant to a joint powers agreement in accordance with this chapter may issue bonds pursuant to Article 2 (commencing with Section 6540) or Article 4 (commencing with Section 6584), in order to purchase or acquire, by sale, assignment, pledge, or other transfer, any or all right, title, and interest of any local agency in and to the enforcement and collection of delinquent and uncollected property taxes, assessments, and other receivables that have been levied by or on behalf of the local agency and placed for collection on the secured, unsecured, or supplemental property tax rolls. Local agencies, including, cities, counties, cities and counties, school districts, redevelopment agencies, and all other special districts that are authorized by law to levy property taxes on the county tax rolls, are hereby authorized to sell, assign, pledge, or otherwise transfer to a joint powers authority any or all of their right, title, and interest in and to the enforcement and collection of delinquent and uncollected property taxes, assessments, and other receivables that have been levied by or on behalf of the local agency for collection on the secured, unsecured, or supplemental property tax rolls in accordance with the terms and conditions that may be set forth in an agreement with a joint powers authority.

(c) Notwithstanding Division 1 (commencing with Section 50) of the Revenue and Taxation Code, upon any transfer authorized in subdivision (b), the following shall apply:

(1) A local agency shall be entitled to timely payment of all delinquent taxes, assessments, and other receivables collected on its

behalf on the secured, unsecured, and supplemental tax rolls, along with all penalties, interest, costs, and other charges thereon, no later than 30 calendar days after the close of the preceding monthly or four-week accounting period during which the delinquencies were paid by or on account of any property owner.

(2) Upon its receipt of the delinquent taxes, assessments, and receivables that it had agreed to be transferred, a local agency shall pay those amounts, along with all applicable penalties, interest, costs, and other charges, to the joint powers authority in accordance with the terms and conditions that may be agreed to by the local agency and the joint powers authority.

(3) The joint powers authority shall be entitled to assert all right, title, and interest of the local agency in the enforcement and collection of the delinquent taxes, assessments, and receivables, including without limitation, its lien priority, its right to receive the proceeds of delinquent taxes, assessments, and receivables, and its right to receive all penalties, interest, administrative costs, and any other charges, including attorney fees and costs, if otherwise authorized by law to be collected by the local agency.

(4) (A) For any school district that participates in a joint powers authority using financing authorized by this section and that does not participate in the alternative method of distribution of tax levies under Chapter 3 of Division 1 of Part 8 of the Revenue and Taxation Code, the amount of property tax receipts to be reported in a fiscal year for the district under subdivision (f) of Section 75.70 of the Revenue and Taxation Code, or any other similar law requiring reporting of school district property tax receipts, shall be equal to 100 percent of the school district's allocable share of the taxes distributed to it for the then fiscal year, plus 100 percent of the school district's share of any delinquent secured and supplemental property taxes assigned from that year and 100 percent of its share of any delinquent secured and supplemental property taxes from any prior years which the school district has assigned to a joint powers authority in that fiscal year, as such delinquent taxes are shown on the delinquent tax roll prescribed by Section 2627 of the Revenue and Taxation Code, on an abstract list if one is kept pursuant to Chapter 4 (commencing with Section 4372) of Part 7 of Division 1 of the Revenue and Taxation Code, or other records maintained by the county, plus all other delinquent taxes that the school district has not assigned to a joint powers authority which are collected and distributed to the school district as otherwise provided by law, less any reduction amount required by subparagraph (B). One hundred percent of the school district's allocable share of the delinquent taxes assigned for the current fiscal year, and 100 percent of the school district's allocable share of the delinquent taxes assigned for all years prior thereto, as shown on

the delinquent roll, abstract list, or other records maintained by the county, whether or not those delinquent taxes are ever collected, shall be paid by the joint powers authority to the county auditor and shall be distributed to the school district by the county auditor in the same time and manner otherwise specified for the distribution of tax revenues generally to school districts pursuant to current law. Any additional amounts shall not be so reported and may be provided directly to a school district by a joint powers authority.

(B) When a joint powers authority finances delinquent taxes for a school district pursuant to this section, and continuing as long as adjustments are made to the delinquent taxes previously assigned to a joint powers authority, the school district's tax receipts to be reported as set forth in subparagraph (A) shall be reduced by the amount of any adjustments made to the school district's allocable share of taxes shown on the applicable delinquent tax roll, abstract list, if one is kept, or other records maintained by the county, occurring for any reason whatsoever other than redemption, which reduce the amount of the delinquent taxes assigned to the joint powers authority.

(C) A joint powers authority financing delinquent school district taxes and related penalties pursuant to this subdivision shall be solely responsible for, and shall pay directly to the county, all reasonable and identifiable administrative costs and expenses of the county which are incurred as a direct result of the compliance of the county tax collector or county auditor, or both, with any new or additional administrative procedures required for the county to comply with this subdivision. Where reasonably possible, the county shall provide a joint powers authority with an estimate of the amount of and basis for any additional administrative costs and expenses within a reasonable time after written request for an estimate.

(D) In no event shall the state be responsible or liable for a joint powers authority's failure to actually pay the amounts required by subparagraphs (A) and (B), nor shall a failure constitute a basis for a claim against the state by a school district, county, or joint powers authority.

(E) The phrase ''school district,'' as used in this section, includes all school districts of every kind or class, including, without limitation, community college districts and county superintendents of school.

(d) The powers conferred by this section upon joint powers authorities and local agencies shall be complete, additional, and cumulative to all other powers conferred upon them by law. Except as otherwise required by this section, the agreements authorized by this section need not comply with the requirements of any other laws applicable to the same subject matter.

(e) An action to determine the validity of any bonds issued, any joint powers agreements entered into, any related agreements, including, without limitation, any bond indenture or any agreements relating to the sale, assignment, or pledge entered into by a joint powers authority or a local agency, the priority of any lien transferred in accordance with this section, and the respective rights and obligations of any joint powers authority and any party with whom the joint powers authority may contract pursuant to this chapter, may be brought by the joint powers authority pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. Any appeal from a judgment in the action shall be commenced within 30 days after entry of judgment.

(f) This section shall not be construed to affect the manner in which an agency participates in or withdraws from the alternative distribution method established by Chapter 3 (commencing with Section 4701) of Part 8 of Division 1 of the Revenue and Taxation Code.

SEC. 74. Section 8869.84 of the Government Code is amended to read:

8869.84. (a) The committee shall, as soon as is practicable after the start of each calendar year, determine and announce the state ceiling for the calendar year.

(b) The entire state ceiling for each calendar year is hereby allocated to the committee to further allocate to state and local agencies as provided in this chapter.

(c) The committee shall prepare application forms and announce procedures for receipt and review of applications from state and local agencies desiring to issue private activity bonds.

(d) The committee may at any time, before or after granting any allocations in any calendar year to any state agencies or local agencies, announce priorities or reservations of any part of the state ceiling not theretofore allocated either for certain categories of bonds or categories of issuers.

(e) The committee may require any issuer making an application to the committee or MBTCAC for allocation of a portion of the state ceiling to make a deposit, as determined by the committee, of up to 1 percent of the portion requested. If an allocation is not given, the deposit shall be returned. If an allocation is given, the deposit shall be kept (in proportion to the amount of allocation given) until bonds are issued. Upon that issuance, the deposit shall be returned to the issuer in an amount equal to the product of (1) the amount of the deposit retained times (2) the ratio between the amount of bonds issued divided by the amount of allocation granted. If no bonds are issued prior to the expiration of the allocation, the deposit shall be kept, unless the committee determines there is good cause to return all or part of the deposit. Any portion of a deposit kept shall be deposited in the fund.

(f) The committee may transfer part of the state ceiling to the MBTCAC, to be used for qualified mortgage bonds and exempt facility bonds, as those terms are used in the Internal Revenue Code, for qualified residential rental projects, as those terms are used in the Internal Revenue Code, (together referred to as ''housing bonds''), with directions and conditions pursuant to which MBTCAC may allocate those amounts to issuers of housing bonds at both the state and local level. In carrying out these functions, MBTCAC shall act solely as directed or authorized by the committee. If the committee makes the transfer to MBTCAC authorized by this subdivision, the references in Sections 8869.85, 8869.86, 8869.87, and 8869.88 to the ''committee'' shall, for purposes of any housing bonds, be deemed to mean MBTCAC.

(g) (1) The committee may establish the Extra Credit Teacher Home Purchase Program to provide federal mortgage credit certificates and reduced interest rate loans funded by mortgage revenue bonds to eligible teachers, principals, vice principals, and assistant principals who agree to teach or provide administration in a low performing school. For purposes of this program, a low performing school is a state K–12 public school that is ranked in the bottom half of the Academic Performance Index developed pursuant to subdivision (a) of Section 52052. However, priority shall be given to schools that are ranked in the bottom three deciles. The committee may make reservations of a portion of future calendar year state ceiling limits for up to five future calendar years for that program. The committee may also make future allocations of the state ceiling for up to five years for any issuer under that program. Any future allocation made by the committee shall constitute an allocation of the state ceiling for a future year specified by the committee and shall be deemed to have been made on the first day of the future year so specified.

(2) The committee may condition allocations under the Extra Credit Teacher Home Purchase Program on any terms and conditions that the committee deems necessary or appropriate, including, but not limited to, the execution of a contract between the teacher, principal, vice principal, or assistant principal and the issuer whereby the teacher, principal, vice principal, or assistant principal agrees to comply with the terms and conditions of the program. The contract may include, among other things, an agreement by the teacher, principal, vice principal, or assistant principal to teach or provide administration in a low performing school for a minimum number of years, and provisions for enforcing the contract that the committee deems necessary or appropriate.

(3) If a teacher, principal, vice principal, or assistant principal does not fulfill the requirements of a contract entered into pursuant to paragraph (2), the issuer of the mortgage credit certificate or mortgage revenue bond may recover as an assessment from the teacher, principal, or assistant principal a monetary amount equal to the lesser of (A)

one-half of the teacher's, principal's, vice principal's, or assistant principal's net proceeds from the sale of the related residence or (B) the amount of monetary benefit conferred on the teacher, principal, vice principal, or assistant principal as a result of the federal mortgage credit certificate or reduced interest rate loan funded by a mortgage revenue bond, offset by the amount of any federal recapture, as defined by Section 143(m) of the Internal Revenue Code. The assessment may be secured by a lien against the residence, which shall decline in amount over the term of the contract as the teacher, principal, vice principal, or assistant principal fulfills the term of the contract, and which shall be collected at the time of sale of the residence. Any assessment collected pursuant to this paragraph shall be used for the issuer's costs in administering the Extra Credit Teacher Home Purchase Program. The issuers shall report annually to the committee the total amount of any assessments collected pursuant to this paragraph and how those assessments were used by the issuer.

(4) If the committee establishes the Extra Credit Teacher Home Purchase Program pursuant to this subdivision, the committee shall report annually to the Legislature the results of the program, including all of the following:

(A) The amount of state ceiling limits allocated to or reserved for the program.

(B) The agencies to which state ceiling limits were issued.

(C) The number of loans or mortgage credit certificates issued to teachers, principals, vice principals, and assistant principals.

(D) The schools at which recipients of assistance are employed, aggregated by decile in which the schools rank on the Academic Performance Index and by the percentage of uncredentialed teachers employed at the schools.

(5) The committee shall not make any reservations of future calendar year state ceiling limits or future allocations of the state ceiling pursuant to this subdivision on or after January 1, 2004, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date. However, reservations and allocations made prior to that date shall remain valid.

SEC. 75. Section 3 of Chapter 1024 of the Statutes of 2000 is amended to read:

Sec. 3. It is the intent of the Legislature that any modification to coursework required by this act shall result in neither additional classes nor in additional costs, but that any modification to coursework shall be incorporated into the requirements of subparagraph (B) of paragraph (1) of subdivision (a) of Section 51225.3 of the Education Code.

SEC. 76. Item 6110-001-0890 of the Budget Act of 2001 is amended to read:

6110–001–0890—For support of Department of Education, for payment to Item 6110–001–0001, payable from the Federal Trust Fund . . . . . $109,361,000

Provisions:

1. The funds appropriated in this item include Federal Vocational Education Act funds for the 2001–02 fiscal year to be transferred to community colleges by means of interagency agreements. These funds shall be used by community colleges for the administration of vocational education programs.
2. Of the funds appropriated in this item, $96,000 is available to the Advisory Commission on Special Education for the in-state travel expenses of the commissioners and the secretary to the commission.
3. Of the funds appropriated in this item, $384,000 is available for programs for homeless youth and adults pursuant to the federal Stewart B. McKinney Act. The department shall consult with the State Departments of Economic Opportunity, Mental Health, Housing and Community Development, and Economic Development in operating this program.
4. Of the funds appropriated in this item, up to $364,000 shall be used to provide in-service training for special and regular educators and related persons, including, but not limited to, parents, administrators, and organizations serving severely disabled children. These funds are also to provide up to four positions for this purpose.
5. Of the funds appropriated in this item, $318,000 shall be used to provide training in culturally nonbiased assessment and specialized language skills to special education teachers.
6. Of the amount appropriated in this item, $600,000 shall be used for the administration of the federal Public Charter School Program. For fiscal year 2001–02, one Education Program Consultant position shall support fiscal issues pertaining to charter schools, including development and implementation of the funding model pursuant to Chapter 34 of the Statutes of 1998.
7. Of the funds appropriated in this item, $932,000 shall be for the administration of the Federal Reading Excellence Act.

8.5. Of the funds appropriated in this item, $9,083,000 is from the Child Care and Development Block Grant Fund and includes $158,000 for an interagency agreement with the Child Development Programs

Advisory Committee. $150,000 is available to increase the base resources for the child development audit workload. These funds are solely for travel expenses to facilitate the goal of conducting field audits on 10 percent of child care and development agencies consistent with Provision 8 of Item 6110–001–0890 of the Budget Act of 2000. The audits shall include sampling to determine the level of compliance with eligibility rules, accuracy of family fee determinations, and family fee collections. The State Department of Education shall provide a report to the Legislature and the Department of Finance by September 1, 2003, on fee and eligibility compliance rates and take steps to reduce compliance problems through sanctions and other remedies available in law.

9. Of the funds appropriated in this item, $1,345,000 shall be used for administration of the Technology Literacy Challenge Grant Program. Of this amount: (a) $580,000 is available only for contracted technical support and evaluation services associated with the Technology Literacy Challenge Grant Program.
10. Of the funds appropriated in this item, $7,952,000 is for dispute resolution services, including mediation and fair hearing services, provided through contract for the Special Education Program.
11. Of the amount provided in this item, $843,000 is provided for staff for the Special Education Focused Monitoring Pilot Program to be established by the State Department of Education for the purpose of monitoring local education agency compliance with state and federal laws and regulations governing special education.
12. Of the amount appropriated in this item, $36,000 shall be used for the administration of the federal class size reduction grant program (Sec. 5, P.L. 106–25).
13. Of the funds appropriated in this item, $120,000 shall be used solely for the administration of the federal advance placement examination fee payment grant program for low-income pupils.
15. Of the funds appropriated in Schedule (2) of this item, $3,000,000 shall be used solely for the purposes of (a) activities associated with ensuring that the High School Exit and standards-based STAR exams are aligned to the state-adopted standards and (b) additional psychometric and

contracting support for the effective and efficient operation of the testing system. Encumbrance of these funds is contingent upon prior approval of an expenditure plan by the State Board of Education.

16. Of the funds appropriated in Schedule (2) of this item, $300,000 shall be used solely for the purposes of contracting for a study to determine the reliability of the Golden State Exams. The choice of a contractor and the contents of the contract shall be subject to approval by the State Board of Education.
17. Not sooner than 30 days after notification in writing to the chairpersons of the committee in each house of the Legislature that considers opportunities and the Chairperson of the Joint Legislative Budget Committee or his or her designee, the Department of Finance may transfer up to $859,000 to this item from Schedule (1) of Item 6110–136–0890, to address activities associated with the implementation of corrective action plans and sanctions pursuant to federal law and, to the extent applicable, Article 3 (commencing with Section 52053) of Chapter 6.1 of Part 28 of the Education Code.
18. Of the funds appropriated in this item, $350,000 shall be available for the preparation, analysis, and production of the annual federal accountability reports, as required by the Carl D. Perkins Vocational Technical Education Act.
19. Of the funds appropriated in this item, $250,000 shall be allocated by the Department of Education to the California State University, San Bernardino, Center for the Study of Correctional Education, for special education monitoring of and technical assistance for the California Youth Authority pursuant to legislation as enacted during the 2001–02 Regular Session. If this legislation is not enacted, the $250,000 shall be used for the purposes of implementing the interagency agreement between the Department of Education and the California Youth Authority, which shall be revised to require onsite, full reviews of each institution and each camp operated by the California Youth Authority once every two years and to require that the onsite, full reviews include, but not be limited to, observation of service delivery, file reviews, and interviews with wards, teachers, parents or surrogate parents, and institutional staff.

20. The balance of unencumbered funds appropriated in subdivision (h) of Provision 7 of Item 6110–001–0890 of the Budget Act of 2000 (Ch. 52, Stats. 2000) shall remain available to the office of the Legislative Analyst for the purpose of providing an evaluation of charter schools pursuant to Chapter 34 of the Statutes of 2000.

SEC. 77. Item 6110-165-0001 of Section 2.00 of the Budget Act of 2001 is amended to read:

6110–165–0001—For local assistance, Department of Education . . . . . 7,022,000

Schedule:

(1) 10.70–Vocational Education . . . . 20,868,000

(2) Reimbursements . . . . . –13,846,000

Provisions:

1. $13,846,000 of the funds appropriated in this item are for the purpose of implementing the federal Workforce Investment Act.
2. Of the funds made available by this section, $7,022,000 is available for allocation by the Superintendent of Public Instruction to support CalWORKs participants who are eligible for youth services, as prescribed by subparagraph (C) of paragraph (1) of subdivision (b) of Section 2852 of Title 29 of the United States Code.

SEC. 78. Item 6110-210-0001 of Section 2.00 of the Budget Act of 2001 is amended to read:

6110–210–0001—For local assistance, State Department of Education, Program 10.10, One-time fund . . . . . 250,000,000

Provisions:

1. The funds appropriated in this item shall be allocated to all local education agencies in the state on the basis of an equal amount per unit of average daily attendance, including average daily attendance attributable to regional occupational centers and programs and adult education programs, as reported on the second principal apportionment for the 2000–01 fiscal year, and average daily enrollment in preschool and child care programs operated by local education agencies under contract with the Child Development Division of the State Department of Education on local education agency schoolsites. For the purpose of determining the average daily enrollment of children served by local education agencies in preschool and child care development programs operated on their schoolsites, the Superintendent of Public Instruction shall divide a local education agency's total number of child days of enrollment in these programs in the 2000–01 school year by 175 days for a preschool program, 246 days for a general or migrant child care program, or 160 days for a schoolage community child care program to determine an average daily enrollment for the programs and allocate funds according to this average daily enrollment. Of the funds distributed for the purposes of this provision, local education agency shall receive not less than $14,000 for each schoolsite within its jurisdiction. Each school district, county office of education, and charter school has discretion to allocate these funds within its jurisdiction as each deems appropriate.
2. For purposes of this item, "schoolsite" means any public school that was a wholly self–contained site, with a separate county–district–school (CDS) code as maintained by the Superintendent of Public Instruction as of June 30, 2000, and that was in operation during the entire 2000–01 school year. Two or more schools that share a physical site or staff shall be considered a single schoolsite.

3. As a condition of receipt of funds provided in this item, school districts, county offices of education, and charter schools shall, in a local governing board resolution adopted in a regularly scheduled public meeting by the end of the 2001–02 fiscal year, identify energy conservation measures that result in a decrease in the amount of energy used by schools within the local education agency. The local governing board resolution shall also include a list of specific actions that will be carried out to achieve the reduction in energy use. Funds appropriated under this item may be used for energy conservation measures, increased energy costs, career/technical education one-time purposes, or any other one-time educational purpose.
4. For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, $123,161,000 of the appropriations made in this item shall be deemed to be "General Fund" revenues appropriated to school districts as defined in subdivision (c) of Section 41202 of the Education Code for the 1995–96 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.
5. For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, $126,839,000 of the appropriations made in this item shall be deemed to be "General Fund" revenues appropriated to school districts as defined in subdivision (c) of Section 41202 of the Education Code for the 1996–97 fiscal year and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202 of the Education Code, for the 1996–97 fiscal year.

SEC. 79. Item 6110-295-0001 of the Budget Act of 2001 is amended to read:

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| 6110–295–0001—For local assistance, Department of Education (Proposition 98), for reimbursement, in accordance with the provisions of Section 6 of Article XIII B of the California Constitution or Section 17561 of the Government Code, of the cost of any new program or increased level of service of an existing program mandated by statute or executive order, for disbursement by the State Controller . . . . . | | 164,303,000 |
| Schedule: | | |
| (1) 98.01.003.677–Annual Parent Notification (Ch. 36, Stats. 1977, et al.) . . . . . | 3,585,000 | |
| (2) 98.01.007.778–Absentee Ballots–Schools (Ch. 77, Stats. 1978 and Ch. 920, Stats. 1994) . . . . . | 1,295,000 | |
| (3) 98.01.008.786–School Discipline Rules (Ch. 87, Stats. 1986) . . . . . | 1,726,000 | |
| (4) 98.01.009.894–Caregiver Affidavits (Ch. 98, Stats. 1994) . . . . . | 387,000 | |
| (5) 98.01.016.093–School District of Choice Transfer and Appeals (Ch. 160, Stats. 1993) . . . . . | 10,207,000 | |
| (6) 98.01.013.487–Pupil Suspensions: District Employee Reports (Ch. 134, Stats. 1987 et al.) . . . . . | 1,022,000 | |
| (7) 98.01.016.193–Intradistrict Attendance (Ch. 161, Stats. 1993) . . . | 5,262,000 | |
| (8) 98.01.017.201–Interdistrict Attendance (Ch. 172, Stats. 1986) . . . | 1,789,000 | |
| (9) 98.01.017.286–Interdistrict Transfer Parent's Employment (Ch. 172, Stats. 1986) . . . . . | 1,111,000 | |
| (10) 98.01.048.675–Test Claims and Reimbursement Claims (Ch. 486, Stats. 1975) . . . . . | 11,856,000 | |
| (11) 98.01.049.801–Graduation Requirements (Ch. 498, Stats. 1983) . . . . . | 13,898,000 | |

(12) 98.01.049.802–Notices of Truancy (Ch. 498, Stats. 1983) . . . . . 7,975,000
(13) 98.01.049.803–Pupil Expulsions/ Expulsion Appeals (Ch. 498, Stats. 1983 et al.) . . . . . 2,427,000
(14) 98.01.062.492–Schoolbus Safety (Ch. 624, Stats. 1992) . . . . . 938,000
(15) 98.01.064.186–Open Meetings Act (Ch. 641, Stats. 1986) . . . . . 3,395,000
(16) 98.01.066.878–Pupil Exclusions (Ch. 668, Stats. 1978) . . . . . 387,000
(17) 98.01.078.192–Charter Schools (Ch. 781, Stats. 1992) . . . . . 598,000
(18) 98.01.078.395–Investment Reports (Ch. 783, Stats. 1995) . . . . 157,000
(19) 98.01.079.980–PERS Death Benefits (Ch. 799, Stats. 1980) . . 771,000
(20) 98.01.081.891–AIDS Prevention Instruction (Ch. 818, Stats. 1991) . . . . . 3,118,000
(21) 98.01.096.175–Collective Bargaining (Ch. 961, Stats. 1975) . . 40,532,000
(22) 98.01.096.501–Pupil Classroom Suspension (Ch. 965, Stats. 1977) . . . . . 1,794,000
(23) 98.01.096.577–Public Health Screenings (Ch. 965, Stats. 1977) . . . . . 3,212,000
(24) 98.01.097.595–Physical Performance Tests (Ch. 975, Stats. 1995) . . . . . 1,176,000
(25) 98.01.101.184–Juvenile Court Records (Ch. 1011, Stats. 1984) . 336,000
(26) 98.01.110.784–Removal of Chemicals (Ch. 1107, Stats. 1984) 1,302,000
(27) 98.01.111.789–Law Enforcement Agency Notifications (Ch. 1117, Stats. 1989) . . . . . 1,510,000

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| (28) 98.01.117.677–Immunization Records (Ch. 1176, Stats. 1977) . . . . . | 3,444,000 |
| (29) 98.01.118.475–Habitual Truants (Ch. 1184, Stats. 1975) . . . . . | 5,397,000 |
| (30) 98.01.121.391–Collective Bargaining Agreement Disclosures (Ch. 1213, Stats. 1991) . . . . . | 271,000 |
| (31) 98.01.125.375–Expulsion Transcripts (Ch. 1253, Stats. 1975) . . | 28,000 |
| (32) 98.01.128.488–Pupil Suspensions: Parents Classroom Visits (Ch. 1284, Stats. 1988) . . . . . | 1,019,000 |
| (33) 98.01.130.689–Notification to Teachers of Pupil Expulsion (Ch. 1306, Stats. 1989) . . . . . | 2,853,000 |
| (34) 98.01.134.780–Scoliosis Screening (Ch. 1347, Stats. 1980) . . . . . | 2,242,000 |
| (35) 98.01.139.874–PERS Unused Sick Leave Credit (Ch. 1398, Stats. 1974) . . . . . | 3,191,000 |
| (36) 98.01.146.389–School Accountability Report Cards (Ch. 1463, Stats. 1989) . . . . . | 2,115,000 |
| (37) 98.01.160.784–School Crimes Reporting (Ch. 1607, Stats. 1984) . | 1,557,000 |
| (38) 98.01.165.984–Emergency Procedures (Ch. 1659, Stats. 1984) . . . | 14,229,000 |
| (39) 98.01.167.584–School Testing–Physical Fitness (Ch. 1675, Stats. 1984) . . . . . | 680,000 |
| (40) 98.01.077.896–American Government Course Documents Requirements (Ch. 778, Stats. 1996) . . . . . | 202,000 |

(41) 98.01.030.995–Pupil Residency Verification and Appeals (Ch. 309, Stats. 1995) . . . . . 219,000

(42) 98.01.058.897–Criminal Background Checks (Ch. 588, Stats. 1997) . . . . . 5,090,000

Provisions:

1. Except as provided in Provisions 2 and 3 of this item, allocations of funds shall be made by the Controller in accordance with the provisions of each statute or executive order that mandates the reimbursement of the costs, and shall be audited to verify the actual amount of the mandated costs in accordance with subdivision (d) of Section 17561 of the Government Code. Audit adjustments to prior year claims may be paid from this item. Funds appropriated by this item may be used to provide reimbursement pursuant to Article 5 (commencing with Section 17615) of Chapter 4 of Part 7 of Division 4 of Title 2 of the Government Code.
2. If any of the scheduled amounts are insufficient to provide full reimbursement of costs, the State Controller may, upon approval of the Director of Finance in writing, augment those deficient amounts from the unencumbered balance of any other scheduled amounts therein. No order may be issued pursuant to this provision unless written notification of the necessity therefore is provided to the chairperson of the committee in each house of the Legislature which considers appropriations and the Chairperson of the Joint Legislative Budget Committee or his or her designee.
3. Notwithstanding any other provision of law, the funds appropriated in Schedules (19) and (35) are for transfer to the Public Employees' Retirement System for reimbursement of costs incurred pursuant to Chapter 1398 of the Statutes of 1974 or Chapter 799 of the Statutes of 1980.

SEC. 80. Item 6110-485 of the Budget Act of 2001 is amended to read:

6110–485—Reappropriation (Proposition 98) Department of Education. The sum of $466,102,000 is reappropriated from the Proposition 98 Reversion Account, for the following purposes:

0001—General Fund

(1) $4,166,000 to the State Department of Education for the purpose of funding prior year Annual Parent Notification–Staff Development mandate claims pursuant to Chapter 929, Statutes of 1997.

(3) $12,005,000 for transfer by the Controller to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to SELPAs to fully fund the 2000–01 Special Education average daily attendance increase.

(5) $846,000 to the State Department of Education, for transfer to Section A of the State School Fund, to fully fund the 1999–00 deficit in the child nutrition program.

(6) $1,281,000 to the State Department of Education, for transfer to Section A of the State School Fund to fully fund the 2000–01 deficit in the child nutrition program.

(8) $10,000,000 on a one-time basis to the State Department of Education for Regional Occupational Centers and Programs for equipment.

(9) $1,000,000 to the State Department of Education for allocation to FCMAT to provide professional management assistance to the Emery Unified School District.

(10) $200,000 to the State Department of Education for allocation to FCMAT to provide professional management assistance to school districts in West Contra Costa County.

(11) $500,000 to the State Department of Education for allocation to FCMAT for the purposes of implementing the Student Friendly Services through Technology project.

(12) $100,000 to the State Department of Education for the purpose of reimbursing districts for the cost of substitute educators pursuant to Section 44987.3 of the Education Code.

(13) $15,000,000 to the State Department of Education for allocation to schools pursuant to Article 2 (commencing with Section 51120) of Chapter 1.5 of Part 28 of the Education Code (Nell Soto Parent/Teacher Involvement Program).

(15) $62,505,000 as a contingency expenditure, to be authorized by the Department of Finance for transfer to the Controller as necessary for the reimbursement of state–mandated cost claims and interest submitted by school districts and county offices of education. These funds would be applied toward the minimum funding requirement for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution for the 2000–01 fiscal year.

(16) $23,939,000 to the State Department of Education for the purpose of funding prior year school crimes reporting mandate claims pursuant to Chapter 759 of the Statutes of 1992 and Chapter 410 of the Statutes of 1995.

(17) $75,318,000 to the State Department of Education for the purpose of funding ongoing mandates claims pursuant to the enactment of mandates claims legislation during the 2001–02 Regular Session.

(18) $4,500,000 for allocation to FCMAT for ongoing fiscal oversight of school districts pursuant to Provision 4.

(19) $4,500,000 to the State Department of Education for allocation to the Fiscal Crisis and Management Assistance Team for costs associated with administration of the California School Information Services Project.

(20) $1,000,000 for allocation to the Fiscal Crisis and Management Assistance Team for the purpose of reviewing school district hiring practices, pursuant to Section 42127.85 of the Education Code.

(21) $15,000,000 to the State Department of Education for the Principal Training Program pursuant to legislation enacted during the 2001–02 Regular Session related to providing professional development training to administrators.

(22) $1,600,000 in one-time funding to the State Department of Education for the School Violence Reimbursement Project in the Grossmont Union High School District.

(23) $3,500,000 in one-time funding to the State Department of Education for the purpose of supporting sustainability and evaluation activities by existing Teenage Pregnancy Prevention Grant Program grantees that received funding in 2000–01 pursuant to Section 8922 of the Education Code. Funding shall be distributed proportionate to the funding received in 2000–01.

(24) $11,566,000 to the State Department of Education for the purpose of funding FCMAT's implementation of the local California School Information Services Project.

(25) $635,000 to the State Department of Education for the Beginning Teacher Salary Program.

(27) $5,500,000 to be set aside on a one-time basis pursuant to legislation enacted during the 2001–02 Regular Session for career/technical education services.

(31) $67,831,000 to the State Department of Education for transfer by the Controller to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts and county offices of education on the basis of an equal amount per unit of average daily attendance for the purpose of the Proposition 98 educational programs specified in subdivision (b) of Section 12.40 of this act.

(32) $110,000 on a one-time basis to the State Department of Education for grants to school districts and county offices of education pursuant to the gender equity train-the-trainer grant programs established pursuant to Section 224.5 of the Education Code.

(33) $10,000,000 to the State Department of Education for the allocation on a one-time basis to implement the High Tech High School Program pending enactment of legislation during the 2001–02 Regular Session.

(35) $35,000,000 for the purpose of limiting the PERS offset to K–12 revenue limit apportionments contingent on legislation enacted prior to January 1, 2002. Pending legislation will specify the method of funding distribution, the manner in which the appropriation will be included in the continuously appropriated K–12 revenue limit apportionment items, and will cap the amount of limitation to $35,000,000 of the amount of offset that would otherwise be required.

(36) $500,000 to the State Department of Education to allocate to school districts for one-time costs associated with the English Language Development Test.

(37) $80,000,000 to the State Department of Education for the Mathematics and Reading Professional Development Program, pursuant to legislation enacted in the 2001–02 Regular Session.

(39) $5,000,000 to be set aside on a one-time basis for the purpose of funding legislation related to establishing the California Information Technology Career Academy Grant Initiative.

(40) $10,000,000 on a one-time basis to the State Department of Education to augment the School Safety Block Grant Program.

(41) $3,000,000 to the State Department of Education to contract for the development of the High School Exit Exam Workbooks.

Provisions:

1. The funds reappropriated in subdivision (24) of this item shall be transferred to FCMAT only if education telecommunications funds do not materialize.

3. The funds reappropriated in subdivision (12) of this item shall only be used to reimburse districts which request reimbursement pursuant to Section 44987.3 of the Education Code.

4. Of the funds reappropriated in subdivision (18) of this item, $4,500,000 shall be allocated to FCMAT for purposes as follows:
   (a) $3,500,000 for the purposes of fully funding county office of education (COE) oversight activities pursuant to Chapter 1213 of the Statutes of 1991 and subsequent laws. These activities include, but are not limited to, conducting reviews, examinations, and audits of districts and providing written notifications of the results at least annually by county offices of education on the fiscal solvency of the districts with disapproved budgets, qualified or negative certifications, or, pursuant to Section 42127.6 of the Education Code, districts facing fiscal uncertainty. Written notifications of the results of these reviews, audits, and examinations shall be provided at least annually to the district governing board, the Superintendent of Public Instruction, the Director of Finance, and the Office of Secretary for Education.
   (b) $1,000,000 to fund reimbursement of COE activities pursuant to Provision 4 of Item 6110–107–0001 or for extraordinary costs of audits, examinations, or reviews of district budgets in cases where the COE has reason to believe fraud, misappropriation of funds, or other illegal fiscal practices require COE review. If the legislation is adopted in the 2001–02 legislative session regarding COE fiscal oversight activities, the funds in this provision may also be used for those purposes. Any unexpended funds provided under this paragraph may be allocated for the development and implementation of training in accordance with paragraph (2) of subdivision (d) of the Section 42127.8 of the Education Code.
   (c) The amounts in subdivision (a) of this provision shall be distributed by a formula to be adopted by FCMAT in consultation with the California County Superintendent Educational Services Association and approved by the Department of Finance and the Superintendent of Public Instruction. The amounts in subdivision (b) of this provision shall be distributed by FCMAT on an as–needed basis subject to approval by the

Department of Finance and the Superintendent of Public Instruction.

7. The funds reappropriated in subdivision (22) of this item shall be allocated by the State Department of Education to the Grossmont Union High School District in San Diego County for the School Violence Reimbursement Project. The Grossmont Union High School District shall expend these funds to increase the ratio of adults to students on campus, including, but not limited to, school staff and faculty, community partners, school security personnel, school resource officers, and volunteers, and to fund a pilot program for a school violence prevention hotline to reduce the risks of acts of violence against students and staff. These funds may also be used to reimburse the Grossmont Union High School District for no budgeted expenses incurred during the separate school campus shootings within the district in 2001.

SEC. 81. The sum of sixty-two thousand dollars ($62,000) appropriated from the Proposition 98 Reversion Account in schedule 9 of Section 42 of Chapter 71 of the Statutes of 2000, as amended by Section 129 of Chapter 1058 of the Statutes of 2000, is hereby reappropriated for allocation on a one-time basis to the Hilmar Unified School District for street access at Hilmar Middle School, to the extent that this funding remains available.

SEC. 82. Notwithstanding any other provision of law, the total apportionment by the Superintendent of Public Instruction to the Compton Unified School District funding for the K–3, Class Size Reduction Program pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28 of the Education Code for the 1999–2000 fiscal year shall be an amount equal to nine million six hundred ninety-five thousand twenty-eight dollars ($9,695,028).

SEC. 83. Notwithstanding any other provision of law, school agency administrative costs and salary-driven benefit costs, including the employer's share of Medicare, unemployment insurance, and workers' compensation, incurred as a result of implementation of Section 40 of Chapter 71 of the Statutes of 2000, shall be paid from funds appropriated for the schoolsite portion of the Academic Performance Index Schoolsite Employees Performance Bonus. School districts, county offices of education, and charter schools may not reduce the amount of Academic Performance Index Schoolsite Employees Performance Bonuses provided to employees to recover the employer's salary-driven benefit costs or administrative costs incurred by the school district as a result of this award.

SEC. 84. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the various programs affected by this act are properly implemented, pursuant to the clarifying, technical, and other changes made by this act, it is necessary that this act take effect immediately.

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## CHAPTER 735

An act to amend Section 32228 of the Education Code, relating to school safety.

[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 32228 of the Education Code is amended to read:

32228. (a) It is the intent of the Legislature that public schools serving pupils in kindergarten or any of grades 1 to 12, inclusive, have access to supplemental resources to establish programs and strategies that promote school safety and emphasize violence prevention among children and youth in the public schools.

(b) It is also the intent of the Legislature that public schools have access to supplemental resources to combat bias on the basis of race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, as defined in subdivision (q) of Section 12926 of the Government Code, and to prevent and respond to acts of hate violence and bias related incidents. Sexual orientation shall not include pedophilia.

(c) It is further the intent of the Legislature that schoolsites receiving funds pursuant to this article accomplish all of the following goals:

(1) Teach pupils techniques for resolving conflicts without violence.

(2) Train school staff and administrators to support and promote conflict resolution and mediation techniques for resolving conflicts between and among pupils.

(3) Reduce incidents of violence at the schoolsite with an emphasis on prevention and early detection.

(4) Provide age-appropriate instruction in domestic violence prevention, dating violence prevention, and interpersonal violence prevention.

SEC. 1.5. Section 32228 of the Education Code is amended to read:

32228. (a) It is the intent of the Legislature that public schools serving pupils in any of grades 8 to 12, inclusive, have access to supplemental resources to establish programs and strategies that promote school safety and emphasize violence prevention among children and youth in the public schools.

(b) It is also the intent of the Legislature that public schools have access to supplemental resources to combat bias on the basis of race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, as defined in subdivision (q) of Section 12926 of the Government Code, and to prevent and respond to acts of hate violence and bias related incidents. Sexual orientation shall not include pedophilia.

(c) It is further the intent of the Legislature that schoolsites receiving funds pursuant to this article accomplish all of the following goals:

(1) Teach pupils techniques for resolving conflicts without violence.

(2) Train school staff and administrators to support and promote conflict resolution and mediation techniques for resolving conflicts between and among pupils.

(3) Reduce incidents of violence at the schoolsite with an emphasis on prevention and early detection.

(4) Provide age-appropriate instruction in domestic violence prevention, dating violence prevention, and interpersonal violence prevention.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 32228 of the Education Code proposed by both this bill and AB 804. 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 32228 of the Education Code, and (3) this bill is enacted after AB 804, in which case Section 1 of this bill shall not become operative.

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## CHAPTER 736

An act to amend Sections 56352 and 60061 of, and to add Section 56351.5 to, the Education Code, relating to special education, and making an appropriation therefor.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 11, 2001.]

I am signing Assembly Bill 306 with a deletion. This bill would authorize local education agencies (LEA) to reinforce Braille instruction using a Braille instructional aide; allow Braille instruction for the functionally blind, require LEAs to provide instructional aides with notification of the specified teaching credential programs listed in the bill; appropriate $227,000 General Fund to the California Community Colleges to offer additional training in Braille and require publishers of instructional materials to provide the state with free electronic versions of each state adopted literary title if the publisher doesn't already offer a large print version or other specialized media version.

I believe this bill will encourage earlier and greater Braille proficiency and lead to greater employment levels for Californians who are blind. 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 reduce the appropriation in the bill from $227,000 General Fund to $100,000 General Fund.

GRAY DAVIS, Governor

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

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

(a) This state is in need of more credentialed teachers who are able to teach braille to visually impaired pupils.

(b) It is vitally important for visually impaired individuals to learn braille. There is a direct correlation between braille literacy and the level of employment and education attained by people who are visually impaired and blind.

(c) This state should ensure that visually impaired pupils are able to read at the same level as their peers.

SEC. 2. Section 56351.5 is added to the Education Code, to read:

56351.5. (a) (1) A school district, special education local plan area, or county office of education may reinforce braille instruction using a braille instructional aide who meets the criteria set forth in paragraph (2) under the supervision of a teacher who holds an appropriate credential, as determined by the Commission on Teacher Credentialing, to teach pupils who are functionally blind or visually impaired. This instruction shall be in accordance with the pupil's individualized education program.

(2) For purposes of this section, a braille instructional aide shall demonstrate to the supervising teacher that he or she is fluent in reading and writing grade 2 braille and possesses basic knowledge of the rules of braille construction.

(b) Any school district, special education local plan area, or county office of education that employs a braille instructional aide shall provide the aide with information regarding teaching credential programs, including the Pre-Internship Teaching Program (Article 5.6 (commencing with Section 44305) of Chapter 2 of Part 25), the Wildman-Keeley-Solis Exemplary Teacher Training Act of 1997 (Article 12 (commencing with Section 44390) of Chapter 2 of Part 25),

and the Teacher Education Internship Act of 1967 (Article 3 (commencing with Section 44450) of Chapter 3 of Part 25).

SEC. 2. Section 56352 of the Education Code is amended to read:

56352. (a) A functional vision assessment conducted pursuant to Section 56320 shall be used as one criterion in determining the appropriate reading medium or media for the pupil.

(b) An assessment of braille skills shall be required for functionally blind pupils who have the ability to read in accordance with guidelines established pursuant to Section 56136. A school district, special education local plan area, or county office of education may provide pupils with low vision with the opportunity to receive assessments to determine the appropriate reading medium or media, including braille instruction, for the pupils.

(c) The determination, by a pupil's individualized education program team, of the most appropriate medium or media, including braille, for functionally blind pupils who have the ability to read shall use as one criterion the assessment provided for pursuant to subdivision (b) and shall be in accordance with guidelines established pursuant to Section 56136.

(d) Except as provided in subdivision (b) of Section 56351.5, braille instruction shall be provided by a teacher who holds an appropriate credential, as determined by the Commission on Teacher Credentialing, to teach pupils who are functionally blind or visually impaired.

(e) Each visually impaired pupil shall be provided with the opportunity to receive an assessment to determine the appropriate reading medium or media, including braille instruction, if appropriate, for that pupil.

SEC. 3. Section 60061 of the Education Code is amended to read:

60061. (a) A publisher or manufacturer shall do all of the following:

(1) Furnish the instructional materials offered by the publisher at a price in this state that, including all costs of transportation to that place, does not exceed the lowest price at which the publisher offers those instructional materials for adoption or sale to any state or school district in the United States.

(2) Automatically reduce the price of those instructional materials to any governing board to the extent that reductions are made elsewhere in the United States.

(3) Provide any instructional materials free of charge in this state to the same extent as that received by any state or school district in the United States.

(4) Guarantee that all copies of any instructional materials sold in this state are at least equal in quality to the copies of those instructional materials that are sold elsewhere in the United States, and are kept

revised, free from all errors, and up to date as may be required by the state board.

(5) Not in any way, directly or indirectly, become associated or connected with any combination in restraint of trade in instructional materials, or enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of instructional materials for use in this state.

(6) Maintain a representative, office, or depository in the State of California or arrange with an independently owned and operated depository in the State of California to receive and fill orders for instructional materials.

(7) Provide to the state, at no cost, computer files or other electronic versions of each state-adopted literary title and the right to transcribe, reproduce, modify, and distribute the material in braille, large print if the publisher does not offer a large print edition, recordings, American Sign Language videos for the deaf, or other specialized accessible media exclusively for use by pupils with visual disabilities or other disabilities that prevent use of standard instructional materials. Computer files or other electronic versions of materials adopted shall be provided within 30 days of request by the state as needed for the purposes described in this subdivision as follows:

(A) Computer files or other electronic versions of literary titles shall maintain the structural integrity of the standard instructional materials, be compatible with commonly used braille translation and speech synthesis software, and include corrections and revisions as may be necessary.

(B) Computer files or other electronic versions of nonliterary titles, including science and mathematics, shall be provided when technology is available to convert those materials to a format that maintains the structural integrity of the standard instructional materials and is compatible with braille translation and speech synthesis software.

(b) Upon the willful failure of the publisher or manufacturer to comply with the requirements of this section, the publisher or manufacturer shall be liable to the governing board in the amount of three times the total sum that the publisher or manufacturer was paid in excess of the price required under paragraphs (1), (2), and (5) of subdivision (a), and in the amount of three times the total value of the instructional materials and services that the governing board is entitled to receive free of charge under subdivision (a).

SEC. 4. The sum of two hundred twenty-seven thousand dollars ($227,000) is hereby appropriated from the General Fund to the Chancellor of the California Community Colleges for allocation to at least 15 community college districts located throughout the state to enable each district to offer at least one additional course to train

individuals in braille instruction to assist in providing services, as prescribed in this act.

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## CHAPTER 737

An act to amend Sections 99220, 99221, 99222, 99223, 99224, 99225, and 99226 of, to add Sections 44579.5 and 99227 to, and to add and repeal Article 3 (commencing with Section 99230) of Chapter 5 of Part 65 of, the Education Code, relating to schools, and making an appropriation therefor.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 11, 2001.]

I am signing Assembly Bill 466, which establishes the Mathematics and Reading Professional Development Program. The Program will greatly assist efforts to increase academic performance in California schools by enabling 176,000 teachers and 22,000 instructional aides or paraprofessionals to participate in high-quality professional development activities over a four-year period.

However, I am reducing from the bill the $1.0 million of the $1.2 million appropriation to the Department of Education for purposes of administering the Mathematics and Reading Professional Development Program. The compelling need for this level of funding is unclear, as the 2001 Budget Act appropriates $515,000 to the Department of Education for the purpose of Program administration, which is responsible for the most significant workload. I am sustaining $200 thousand to assist the Superintendent of Public Instruction in allocating the funding for this important program.

Additionally, in subsequent legislation, the provision requiring the State Board of Education to establish an appeal process for audit findings for this program should be removed. This provision conflicts with current law, which established the Education Audits Appeal Panel.

GRAY DAVIS, Governor

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

SECTION 1. Section 44579.5 is added to the Education Code, to read:

44579.5. Notwithstanding any other provision of law, a school district, charter school, or county office of education that participates in the Mathematics and Reading Professional Development Program pursuant to Article 3 (commencing with Section 99230) of Chapter 5 of Part 65 may claim funding, as described in subdivision (c) of Section 44579.1, for the 80 hours of followup instruction, coaching, or additional schoolsite assistance required pursuant to subdivision (b) of Section 99237 if the training meets the requirements described in subdivision (d) of Section 44579.1 and is conducted outside of an instructional day that the school district, charter school, or county office

of education is required to provide in order to qualify for funding pursuant to Part 26 (commencing with Section 46000). Funding claimed pursuant to this section shall be in addition to funding received pursuant to Article 3 (commencing with Section 99230) of Chapter 5 of Part 65.

SEC. 2. Section 99220 of the Education Code is amended to read:

99220. The Regents of the University of California are requested to jointly develop with the Trustees of California State University and the independent colleges and universities, the California Reading Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) (1) In June 1999, the University of California and its institutes' partners shall commence instruction for 6,000 participants who either provide direct instruction in reading to pupils in kindergarten or in grade 1, 2, or 3, or who supervise beginning teachers of reading. Commencing in July 2000, the institutes shall provide instruction for an additional 14,000 participants who either provide direct instruction in reading to pupils, including special education pupils, in prekindergarten, kindergarten or in grade 1, 2, or 3, or supervise beginning teachers of reading. Of the 14,000 new positions, at least 2,000 shall be reserved for prekindergarten teachers who teach in state preschool programs located in the attendance area of low-performing schools in order to link prekindergarten literacy development and reading readiness to the state's reading goals for pupils enrolled in kindergarten and grades 1 to 3, inclusive. If there are not enough applicants to fill the 2,000 positions, the remaining positions may be filled by teachers of pupils enrolled in kindergarten or any of grades 1 to 3, inclusive.

(2) Ongoing support for second-year participants shall include a second-year institute focusing on the use of instructional materials, leveraging of school district resources, and the development of teacher leadership within the school district to improve pupil achievement in reading.

(b) (1) The institutes shall provide instruction for school teams from each participating school. These school teams may include both beginning and experienced teachers and the schoolsite administrator, with the majority of the team composed of beginning teachers.

(2) Criteria and priority for selection of participating school teams shall include, but not necessarily be limited to, all of the following:

(A) Schools whose pupils' reading scores are at or below the 40th percentile on the reading portion of the achievement test authorized by Section 60640.

(B) Schools with a high number of beginning and noncredentialed teachers.

(C) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced price meals.

(D) Schools with a full complement of team members as outlined above.

(E) School teams committed to participate in the Elementary School Intensive Reading Program established pursuant to Article 1 (commencing with Section 53025) of Chapter 16 of Part 28 for a minimum of three years.

(F) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (B) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of reading in a manner consistent with the standard for a comprehensive reading instruction program that is research-based, as described in subparagraphs (A) and (B) of paragraph (4) of subdivision (b) of Section 44259, and shall include all of the following components:

(A) The study of organized, systematic, explicit skills including phonemic awareness, direct, systematic explicit phonics, and decoding skills.

(B) A strong literature, language and comprehension component with a balance of oral and written language.

(C) Ongoing diagnostic techniques that inform teaching and assessment.

(D) Early intervention techniques.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum framework on reading/language arts adopted by the State Board of Education.

(3) Instruction provided pursuant to this section shall acquaint teachers with the value in the diagnostic nature of standardized tests.

(d) (1) Each participant who satisfactorily completes an institute authorized by this section shall receive a stipend, commensurate with the duration of the institute, of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000), as determined by the University of California.

(2) A participant in an institute authorized by this section who satisfactorily completes additional institute activities or leadership and mentoring responsibilities in his or her school in subsequent years in accordance with institute guidelines shall receive a stipend, commensurate with the participant's responsibilities, of not less than five hundred dollars ($500) and not more than two thousand dollars

($2,000), as determined by the University of California. It is the intent of the Legislature that stipends paid to participants under this paragraph average approximately one thousand dollars ($1,000) per stipend recipient per year.

(e) In order to provide maximum access, the institutes shall be offered through multiple university and college campuses that are widely distributed throughout the state or in a regionally accredited program offered through instructor-led, interactive online courses. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through state-approved instructor-led, interactive online courses. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 120 hours during the summer or during an intersession break or an equivalent instructor-led, online course, and shall be supplemented, during the following school year, with no fewer than 80 additional hours nor more than 120 additional hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in reading.

(f) It is the intent of the Legislature that a local education agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of reading course requirements to an enrolled candidate who satisfactorily completes a California Reading Professional Development Institute program if the institute has been certified by the Commission on Teacher Credentialing as meeting reading preparation standards.

(g) Nothing in this section shall be construed to prohibit a participant from attending an institute authorized by this section in more than one academic year.

(h) ''Beginning teachers,'' for purposes of this article, are teachers with three or fewer years of teaching experience.

SEC. 3. Section 99221 of the Education Code is amended to read:

99221. The Regents of the University of California are requested to develop jointly with the Trustees of the California State University and the independent colleges and universities, the High School English Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) In July 2000, the University of California and its institutes' partners shall commence instruction for 12,000 participants who either provide direct instruction in reading and writing to California public

high school pupils in grades 9 to 12, inclusive, or supervise beginning teachers of high school reading and writing.

(b) (1) The institutes shall provide instruction for school teams from each participating school. These school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but is not limited to, all of the following:

(A) Schools whose pupils' scores on the English language arts portion of the achievement test authorized by Section 60640 are at or below the 40th percentile.

(B) Teams composed of a large percentage of the members of their schools' English departments, which may include the chair of that department.

(C) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced price meals.

(D) Teams of teachers from various departments within a school.

(E) Schools with a high number of beginning and noncredentialed teachers.

(F) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (E) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of reading and writing in a manner consistent with the standard for a comprehensive reading and writing instruction program that is research-based, as described in subparagraphs (A) and (B) of paragraph (4) of subdivision (b) of Section 44259.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on reading/language arts for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.

(3) Instruction provided pursuant to this section shall acquaint teachers with the value in the diagnostic nature of standardized tests.

(d) In order to provide maximum access, the institutes shall be offered through multiple university and college campuses that are widely distributed throughout the state or in a regionally accredited program offered through instructor-led, interactive online courses. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through state-approved instructor-led, interactive online courses. Instruction at the institutes shall consist of an

intensive, sustained training period of no less than 40 hours nor more than 120 hours during the summer or during an intersession break or an equivalent instructor-led, online course and shall be supplemented, during the following school year, with no fewer than 80 additional hours nor more than 120 additional hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in English language arts.

(e) It is the intent of the Legislature that a local education agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of English language arts requirements to an enrolled candidate who satisfactorily completes a High School English Professional Development Institute if the institute has been certified by the Commission on Teacher Credentialing as meeting English language arts standards.

SEC. 4. Section 99222 of the Education Code is amended to read:

99222. The Regents of the University of California are requested to develop jointly with the Trustees of California State University and the independent colleges and universities, the High School Mathematics Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) In July 2000, the University of California and its institutes' partners shall commence instruction for 5,500 participants who either provide direct instruction in mathematics to California public high school pupils in grades 9 to 12, inclusive, or supervise beginning teachers of high school mathematics.

(b) (1) The institutes shall provide instruction for school teams from each participating school. The school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but not necessarily be limited to, all of the following:

(A) Schools whose pupils' scores on the mathematics portion of the achievement test authorized by Section 60640 are at or below the 40th percentile.

(B) Teams composed of a large percentage of members of their schools' mathematics departments, which may include the chair of that department.

(C) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced price meals.

(D) Schools with a high number of beginning and noncredentialed teachers.

(E) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (D) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of mathematics in a manner consistent with the standard for a comprehensive mathematics instruction program that is research-based and shall include all of the following components:

(A) Instruction in topics commonly found in high school mathematics courses, including, but not limited to, geometry, algebra II, trigonometry, and calculus, that will enhance the ability of teachers to prepare pupils for the achievement test authorized pursuant to Section 60640 and the high school exit examination authorized pursuant to Section 60850 and to prepare pupils for advanced placement and college coursework.

(B) Ongoing diagnostic techniques that inform teaching and assessment.

(C) Early intervention techniques for pupils experiencing difficulty in mathematics.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on mathematics for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.

(3) Instruction provided pursuant to this section shall acquaint teachers with the value in the diagnostic nature of standardized tests.

(d) In order to provide maximum access, the institutes shall be offered through multiple university and college campuses that are widely distributed throughout the state or in a regionally accredited program offered through instructor-led, interactive online courses. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through state-approved instructor-led, interactive online courses. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 120 hours during the summer or during an intersession break or an equivalent instructor-led, online course and shall be supplemented, during the following school year, with no fewer than 80 additional hours nor more than 120 additional hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in mathematics.

(e) It is the intent of the Legislature that a local education agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of mathematics course requirements to an enrolled candidate who satisfactorily completes a High School Mathematics Professional Development Institute if the institute has been certified by the Commission on Teacher Credentialing as meeting mathematics standards.

SEC. 5. Section 99223 of the Education Code is amended to read:

99223. The Regents of the University of California are requested to jointly develop with the Trustees of the California State University and the independent colleges and universities, the Algebra Academies Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) In July 2000, the University of California and its institutes' partners shall commence instruction for 1,000 participants who either provide direct instruction in prealgebra and algebra to pupils in grades 7 and 8, or supervise beginning teachers of algebra.

(b) (1) The institutes shall provide instruction for school teams from each participating school. These school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but are not necessarily limited to, all of the following:

(A) Schools whose pupils' scores on the mathematics portion of the achievement test authorized by Section 60640 are at or below the 40th percentile.

(B) Teams composed of a large percentage of members of their schools' mathematics departments, which may include the chair of that department.

(C) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced price meals.

(D) Schools with a high number of beginning and noncredentialed teachers.

(E) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools that meet the criteria described in subparagraph (D) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of prealgebra and algebra in a manner consistent with the standard for a

comprehensive mathematics instruction program that is research-based and shall include all of the following components:

(A) Instruction in prealgebra and algebra that will enhance the ability of teachers to prepare pupils for the achievement test authorized pursuant to Section 60640 and the high school exit examination authorized pursuant to Section 60850.

(B) Ongoing diagnostic techniques that inform teaching and assessment.

(C) Early intervention techniques for pupils experiencing difficulty in prealgebra and algebra.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on mathematics for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.

(3) Instruction provided pursuant to this section shall acquaint teachers with the value in the diagnostic nature of standardized tests.

(d) Each participant who satisfactorily completes an institute authorized by this section shall receive a stipend, commensurate with the duration of the institute, of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000), as determined by the University of California.

(e) In order to provide maximum access, the institutes shall be offered on multiple university and college campuses that are widely distributed throughout the state. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours during the summer or during an intersession break, and shall be supplemented, during the following school year, with no fewer than the equivalent of five additional days of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in prealgebra and algebra.

(f) Teachers attending the institutes authorized by this section shall, as a condition of attendance and subsequent to that attendance, serve as instructors in the program authorized by Chapter 17 (commencing with Section 53081) of Part 28. These teachers shall continue to receive followup professional development during the same time period they are providing instruction. Followup professional development during this time period shall occur outside of instructional time.

(g) It is the intent of the Legislature that a local education agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of mathematics course requirements to an enrolled candidate who satisfactorily completes an Algebra Academies Professional Development Institute if the institute has been certified by

the Commission on Teacher Credentialing as meeting mathematics standards.

SEC. 6. Section 99224 of the Education Code is amended to read:

99224. The Regents of the University of California are requested to develop jointly with the Trustees of the California State University and the independent colleges and universities, the Algebra Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) In July 2000, the University of California and its institutes' partners shall commence instruction for 5,000 participants who either provide direct instruction in algebra or the coursework in the two years leading to algebra to pupils enrolled in a public school in grades 6 to 12, inclusive, or supervise beginning teachers of algebra.

(b) (1) The institutes shall provide instruction for school teams from each participating school. These school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but not necessarily be limited to, all of the following:

(A) Schools whose pupils' scores on the mathematics portion of the achievement examination authorized by Section 60640 are at or below the 40th percentile.

(B) Teams composed of a large percentage of members of their schools' mathematics departments, which may include the chair of that department.

(C) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced price meals.

(D) Schools with a high number of beginning and noncredentialed teachers.

(E) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (D) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of prealgebra and algebra in a manner consistent with the standard for a comprehensive mathematics instruction program that is research-based, and shall include all of the following components:

(A) Instruction in prealgebra and algebra that will enhance the ability of teachers to prepare pupils for the achievement test authorized pursuant to Section 60640 and the high school exit examination authorized pursuant to Section 60850.

(B) Ongoing diagnostic techniques that inform teaching and assessment.

(C) Intervention techniques for pupils experiencing difficulty in prealgebra and algebra.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on mathematics for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.

(3) Instruction provided pursuant to this section shall acquaint teachers with the value in the diagnostic nature of standardized tests.

(d) In order to provide maximum access, the institutes shall be offered through multiple university and college campuses that are widely distributed throughout the state or in a regionally accredited program offered through instructor-led, interactive online courses. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through state-approved instructor-led, interactive online courses. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 120 hours during the summer or during an intersession break or an equivalent instructor-led, online course and shall be supplemented, during the following school year, with no fewer than 80 additional hours nor more than 120 additional hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in prealgebra and algebra.

(e) It is the intent of the Legislature that a local education agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of mathematics course requirements to an enrolled candidate who satisfactorily completes a High School Algebra Professional Development Institute if the institute has been certified by the Commission on Teacher Credentialing as meeting mathematics standards.

SEC. 7. Section 99225 of the Education Code is amended to read:

99225. The Regents of the University of California are requested to develop collaboratively with the Trustees of the California State University, the independent colleges and universities, and the county offices of education, the Elementary Mathematics Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) In July 2000, the University of California and its institutes' partners shall commence instruction for 5,000 participants who either provide direct instruction in elementary mathematics to pupils in grades 4 to 6, inclusive, or supervise beginning teachers of elementary mathematics.

(b) (1) The institutes shall provide instruction for school teams from each participating school. These school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but not necessarily be limited to, all of the following:

(A) Schools whose pupils' scores on the mathematics portion of the achievement test authorized by Section 60640 are at or below the 40th percentile.

(B) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced price meals.

(C) Schools with a high number of beginning and noncredentialed teachers.

(D) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (C) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of elementary mathematics in a manner consistent with the standard for a comprehensive mathematics instruction program that is research-based, and shall include all of the following components:

(A) Instruction in elementary mathematics that will enhance the ability of teachers to prepare pupils for the achievement test authorized pursuant to Section 60640 and the high school exit examination authorized pursuant to Section 60850.

(B) Instruction that will prepare teachers as mathematics specialists and to become teacher trainers at their schools, assuming more of the responsibility for mathematics instruction.

(C) Ongoing diagnostic techniques that inform teaching and assessment.

(D) Early and continuing intervention techniques for pupils experiencing difficulty in elementary mathematics.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on mathematics for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.

(3) Instruction provided pursuant to this section shall acquaint teachers with the value in the diagnostic nature of standardized tests.

(d) In order to provide maximum access, the institutes shall be offered through multiple university and college campuses that are widely distributed throughout the state or in a regionally accredited program offered through instructor-led, interactive online courses. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through state-approved instructor-led, interactive online courses. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 120 hours during the summer or during an intersession break or an equivalent instructor-led, online course, and shall be supplemented, during the following school year, with no fewer than 40 additional hours nor more than 120 additional hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in elementary mathematics.

(e) It is the intent of the Legislature that a local education agency or postsecondary institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of mathematics course requirements to an enrolled candidate who satisfactorily completes an Algebra Professional Development Institute if the institute has been certified by the Commission on Teacher Credentialing as meeting mathematics standards.

SEC. 8. Section 99226 of the Education Code is amended to read:

99226. (a) This article shall apply to the University of California only during periods for which the Legislature has appropriated funds therefor in the annual Budget Act and the Regents of the University of California have accepted the funds.

(b) This article shall not apply to the University of California unless and until the Regents of the University of California act, by resolution, to make it applicable.

(c) The Regents of the University of California are requested to jointly develop with the Trustees of California State University and the independent colleges and universities, the institutes described in this article, to be administered by the University of California, in partnership with the California State University and with private, independent universities in California.

(d) Each participant who satisfactorily completes an institute authorized by this article shall receive a stipend commensurate with the duration of the institute, of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000), as determined by the University of California. However, in making this determination, the University of California may not exceed the amount provided in the

Budget Act for stipends for each of the institutes authorized by this article and must serve at each institute the number of participants specified pursuant to this section.

(e) Commencing July 2001, and each fiscal year thereafter, the number of participants receiving instruction through each of these institutes shall be designated in the annual Budget Act.

(f) These institutes shall be developed in accordance with all of the criteria specified in each section, as described therein.

(g) Notwithstanding any other provision of law, on a case-to-case basis, and subject to the concurrence of the State Board of Education that priorities for service to high-need schools are met, the University of California and the programs authorized pursuant to Sections 99220 through 99226, inclusive, may serve teachers in prekindergarten through grade 12 in participating school districts with programs in reading or mathematics when the average of the reading or mathematics portions of the achievement test authorized pursuant to Section 60640 is at or below the priority level for service in schools otherwise served by the California Professional Development Institutes.

SEC. 9. Section 99227 is added to the Education Code, to read:

99227. Within the criteria and priority for the selection of participating school teams set forth in paragraph (2) of subdivision (b) of Sections 99220, 99221, 99222, 99223, 99224, and 99225, priority for the selection of teachers to participate in the professional development institutes authorized pursuant to those sections shall be determined in the following manner:

(a) Teachers who have not participated in a professional development institute in reading or mathematics that is authorized pursuant to this article shall be accorded first priority for training pursuant to this article.

(b) Teachers who have participated in a professional development institute in reading or mathematics that is authorized pursuant to this article, but who have not yet received supplemental training in the areas specified in paragraph (2) of subdivision (a) of Section 99237 shall be accorded second priority for training pursuant to this article.

(c) Teachers who have participated in a professional development institute in reading or mathematics that is authorized pursuant to this article, and have received supplemental training in the areas specified in paragraph (2) of subdivision (a) of Section 99237 shall be accorded third priority for training pursuant to this article.

SEC. 10. Article 3 (commencing with Section 99230) is added to Chapter 5 of Part 65 of the Education Code, to read:

## Article 3. Mathematics and Reading Professional Development Program

99230. This article shall be known and may be cited as the Mathematics and Reading Professional Development Program.

99231. For the purpose of this article, the following terms have the following meanings:

(a) ''Instructional aide'' means a person who is employed on either a full-time or a part-time basis for the purpose of directly assisting with classroom instruction in mathematics and reading in a California public school in which kindergarten or any of grades 1 to 12, inclusive, are taught and who does not possess a valid teaching credential, certificate, authorization, or permit issued by the Commission on Teacher Credentialing and does not include a paraprofessional, as defined in subdivision (b).

(b) ''Paraprofessional'' means a teacher aide, a teacher assistant, or a speech language pathology assistant who is employed on either a full-time or a part-time basis for the purpose of directly assisting with classroom instruction in mathematics and reading in a California public school in which kindergarten or any of grades 1 to 12, inclusive, are taught and who does not possess a valid teaching credential, certificate, authorization, or permit issued by the Commission on Teacher Credentialing.

(c) ''Instructional materials that are aligned to state standards'' means, for grades 1 to 8, inclusive, materials adopted by the State Board of Education after January 1, 2001, unless otherwise authorized by the State Board of Education. For grades 9 to 12, inclusive, ''instructional materials that are aligned to state standards'' means materials that the governing board of the local education agency has, after careful review, certified are aligned to both the state reading or mathematics content standards and the curriculum frameworks for these subjects.

(d) ''Local education agency'' means a school district, county office of education, or charter school.

(e) ''Teacher'' means a person who holds a valid teaching credential, certificate, authorization, or permit issued by the California Commission on Teacher Credentialing and is employed on either a full-time or a part-time basis in a California public school in which kindergarten or any of grades 1 to 12, inclusive, are taught.

99232. (a) The Mathematics and Reading Professional Development Program is hereby established and shall be administered by the Superintendent of Public Instruction with the approval of the State Board of Education.

(b) A local education agency that maintains kindergarten or any of grades 1 to 12, inclusive, is eligible to apply for and receive incentive funding from funds appropriated for the purpose of this article.

(c) From funds appropriated for the purpose of this article, the Superintendent of Public Instruction shall award funding to provide teachers and instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading with instruction and training in the areas of mathematics and reading.

99233. (a) This program is intended to serve the following categories of staff:

(1) Teachers employed in a public school for the purpose of teaching in a self-contained classroom that serves pupils in kindergarten or any of grades 1 to 8, inclusive. Teachers described in this paragraph are eligible to receive instruction in both mathematics and reading.

(2) Teachers employed in a public school for the purpose of providing both mathematics and English instruction to pupils with exceptional needs. Teachers described in this paragraph are eligible to receive instruction in both mathematics and reading.

(3) Teachers who hold a single-subject teaching credential, certificate, or authorization issued by the Commission on Teacher Credentialing that authorizes them to teach English or social science in a classroom that is not self-contained and who are employed in a public school. Teachers described in this paragraph are eligible to receive instruction in reading.

(4) Holders of one-year emergency teaching permits and emergency career substitute teaching permits who are employed in a public school and assigned to teach English or social science courses in a classroom that is not self-contained. Teachers described in this paragraph are eligible to receive instruction in reading.

(5) Teachers who hold a single-subject teaching credential, certificate, or authorization issued by the Commission on Teacher Credentialing that authorizes them to teach mathematics or science in a classroom that is not self-contained and who are employed in a public school. Teachers described in this paragraph are eligible to receive instruction in mathematics.

(6) Holders of one-year emergency teaching permits and emergency career substitute teaching permits who are employed in a public school and assigned to teach mathematics or science courses in a classroom that is not self-contained. Teachers described in this paragraph are eligible to receive instruction in mathematics.

(7) Instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading who are employed in a public school for the purpose of assisting teachers in the instruction of pupils in kindergarten or any of grades 1 to 12, inclusive. Instructional

aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading described in this paragraph are eligible to receive instruction in both mathematics and reading.

(b) Holders of emergency 30-day substitute teaching permits issued by the California Commission on Teacher Credentialing are not eligible to receive training offered pursuant to this article.

99234. (a) The Superintendent of Public Instruction shall notify local education agencies that they are eligible to receive an incentive award for up to 12 percent of its eligible teachers in the 2001–02 fiscal year, up to 28.5 percent in the 2002–03 fiscal year, and up to 28.5 percent in the 2003–04 fiscal year, with the remainder for its eligible teachers in the 2004–05 fiscal year. It is the intent of the Legislature that a local education agency give highest priority to training teachers assigned to low-performing schools. It is also the intent of the Legislature that funding appropriated in one fiscal year that is not expended by a local education agency be redirected to local education agencies that have trained more eligible teachers than the percentage funded. When a redirection of funding occurs, funding in subsequent fiscal years for the local education agencies involved shall be adjusted to reflect the redirection of funding.

(b) A school district that cannot make the certification required pursuant to paragraph (3) of subdivision (a) of Section 99237 for all the grade levels it maintains in reading and mathematics may apply for and receive incentive funding for the grade levels and subjects for which it can make the certification required pursuant to paragraph (3) of subdivision (a) of Section 99237, in which case the certified assurance submitted pursuant to Section 99237 shall apply only to the professional development provided to teachers and instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading in the grade levels and subjects for which it can make the certification required pursuant to paragraph (3) of subdivision (a) of Section 99237.

(c) Of the incentive provided pursuant to subdivision (c), a local education agency may use not more than one thousand dollars ($1,000) of the per teacher per subject amount to provide an individual teacher stipend.

(d) The Superintendent of Public Instruction shall notify local education agencies that the maximum funding for the purpose of this article for which they are eligible each year is equal to the percentage set forth in subdivision (a), multiplied by the sum of the following two factors multiplied by two thousand five hundred dollars ($2,500):

(1) Twice the number of multiple subjects teachers teaching in a self-contained classroom and special education teachers, as specified in paragraphs (1) and (2) of Section 99233, that provide direct instruction

in reading and mathematics as reported in the most recent available CBEDS data, who have not received training pursuant to either this article or Article 2 (commencing with Section 99220).

(2) The number of mathematics, English, science, and social science teachers as specified in paragraphs (3) to (6), inclusive, of Section 99233 that were reported in the most recent available CBEDS data, who have not received training pursuant to either this article or Article 2 (commencing with Section 99220).

(e) The Superintendent of Public Instruction shall allocate funding appropriated for the purposes of this article in the following order of priority:

(1) Two thousand five hundred dollars ($2,500) for each qualifying teacher who was provided training pursuant to subdivision (a) in the prior year for whom the local education agency did not receive funding due to insufficient availability of funds in the prior fiscal year.

(2) Two thousand five hundred dollars ($2,500) for each qualifying teacher who was provided training pursuant to this article, subject to the limitations in subdivision (d).

(3) Five hundred dollars ($500) for each qualifying teacher for each qualifying program as specified in Article 2 (commencing with Section 99220) who successfully completes mathematics or reading standards training, or both, at a California Professional Development Institute authorized pursuant to Article 2 (commencing with Section 99220) in the 2001–02 fiscal year to the 2004–05 fiscal year, inclusive, using funds received pursuant to Article 2 (commencing with Section 99220), and has had specific approved training on the mathematics or reading instructional materials selected for use in the school.

(4) Five hundred dollars ($500) for each qualifying teacher in each qualifying program pursuant to Article 2 (commencing with Section 99220) who successfully completed mathematics or reading standards training, or both, at a California Professional Development Institute authorized pursuant to Article 2 (commencing with Section 99220) in the 1999–2000 or 2000–01 fiscal year, using funds received pursuant to Article 2 (commencing with Section 99220), and has had specific approved training on the mathematics or English-language arts instructional materials selected for use in the school.

(5) Two thousand five hundred dollars ($2,500) for each qualifying teacher who was provided training pursuant to this article in excess of limitations in subdivision (d).

(f) For purposes of this article, qualifying teachers who, in the 2000–01 fiscal year, received training at a California Professional Development Institute authorized pursuant to Article 2 (commencing with Section 99220) that was paid for by a local education agency using funds that were not received pursuant to Article 2 (commencing with

Section 99220) shall be deemed to have received training in the 2001–02 fiscal year. A local education agency shall receive funding for these qualifying teachers in accordance with paragraph (2) of subdivision (e).

(g) Except as provided in subdivision (f) of Section 99237, funding may not be provided to a local education agency until the State Board of Education approves the agency's certified assurance submitted pursuant to Section 99237.

(h) Of the funding a local education agency is eligible to receive pursuant to this section for each eligible teacher, up to the number specified in subdivision (a), 50 percent shall be awarded following the provision of 40 hours of professional development as specified in subdivision (b) of Section 99237, with the remaining funding to be awarded following certification of the provision of the 80 hours of followup instruction as specified in subdivision (b) of Section 99237.

(i) Except as provided in paragraphs (3) and (4) of subdivision (e), a local education agency may not receive funds pursuant to this article for teachers who receive training pursuant to Article 2 (commencing with Section 99220) using funding provided pursuant to Article 2 (commencing with Section 99220).

99234.5. Prioritization for participation in the program established pursuant to this article shall be determined in the following manner:

(a) Teachers who have not participated in a professional development institute in reading or mathematics that is authorized pursuant to Article 2 (commencing with Section 99220) shall be accorded first priority for training pursuant to this article.

(b) Teachers who have participated in a professional development institute in reading or mathematics that is authorized pursuant to Article 2 (commencing with Section 99220), but who have not yet received supplemental training in the areas specified in paragraph (2) of subdivision (a) of Section 99237 shall be accorded second priority for training pursuant to this article.

99235. (a) The Superintendent of Public Instruction shall notify local education agencies that they are eligible to receive funding to provide instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading with professional development training in mathematics and reading, in an amount equal to one thousand dollars ($1,000) per qualifying instructional aide. Funding will be provided to local education agencies on a first-come, first-serve basis. A local education agency that chooses to participate in the program is eligible to receive funding for no greater than 11.5 percent of its instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading in the 2001–02 fiscal year, 29.5 percent in the 2002–03 fiscal year, 29.5 percent in the 2003–04 fiscal year, with the remainder to be funded in the

2004–05 fiscal year. However, the statewide total number of instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading served under this program may not exceed 22,000 over the four fiscal years.

(b) Of the incentive provided pursuant to subdivision (a), a local educational agency may use not more than five hundred dollars ($500) of the per instructional aide and paraprofessionals who directly assist with classroom instruction in mathematics and reading amount to provide an individual instructional aid stipend.

99236. The State Board of Education shall authorize the Superintendent of Public Instruction to design, and the board shall approve, regulations for the implementation and monitoring of the program. The Superintendent of Public Instruction shall provide funding to a local education agency in accordance with the funding methodology specified in Sections 99234 and 99235 and with regulations adopted by the State Board of Education.

99237. (a) Except as provided in subdivision (f), as a condition of receipt of funds for purposes of Section 99234 or 99235, a local education agency shall submit a certified assurance signed by the appropriate agency official and approved in a public session by the governing body of the agency to the State Board of Education that contains its proposal to satisfy the following:

(1) It contracted with a provider whose training curriculum was approved by the State Board of Education or the local education agency's training curriculum was approved by the State Board of Education. Approval by the State Board of Education of the training curriculum shall be based on the criteria contained in paragraph (4) and in subdivision (b).

(2) It or the provider with whom it contracted provided professional development training focused primarily on the following:

(A) The use of instructional materials that will be used by pupils and are aligned to the English-language arts and mathematics content standards adopted by the State Board of Education pursuant to Section 60605.

(B) The English-language arts and mathematics content standards adopted by the State Board of Education pursuant to Section 60605.

(C) The curriculum frameworks adopted by the State Board of Education for these subjects.

(3) (A) It provides each pupil with instructional materials that are aligned to the state content standards in reading and mathematics no later than the first day of the first school term that commences 12 months or less after those materials are adopted by the State Board of Education in the case of instructional materials for grades 1 to 8, inclusive, or by the

governing board of the school district in the case of instructional materials for grades 9 to 12, inclusive.

(B) For local education agencies that are piloting or evaluating instructional materials that are aligned to the state content standards in English-language arts or mathematics, those materials shall be provided to each pupil no later than the first day of the first school term that commences 24 months or less after those materials were adopted by the State Board of Education in the case of instructional materials for grades 1 to 8, inclusive, or by the governing board of the school district in the case of instructional materials for grades 9 to 12, inclusive.

(C) If a local education agency has not adopted instructional materials as required by subparagraph (A) for one or more grade levels because it is piloting or evaluating those instructional materials, the local education agency may only claim funding pursuant to Section 99234 for grade levels and subjects where the local education agency is in compliance with subparagraphs (A) and (B).

(D) For each teacher, in each core area for which funding is claimed pursuant to this article and for which there are not standards aligned textbooks for each pupil, as determined through an audit, the Superintendent of Public Instruction, on a one-time basis, shall withhold from the local education agency's next monthly principal apportionment payment an amount equal to one hundred dollars ($100) for each of those pupils. The funds withheld are deemed to be an offset against the training funds provided pursuant to this article.

(4) It provides in-house professional development that focuses primarily on the following:

(A) The use of instructional materials that will be used by pupils and are aligned to the English-language arts and mathematics content standards adopted by the State Board of Education pursuant to Section 60605.

(B) The English-language arts and mathematics content standards adopted by the State Board of Education pursuant to Section 60605.

(C) The curriculum frameworks adopted by the State Board of Education for these subjects.

(5) It provides the data elements required pursuant to Section 99240.

(b) As an additional condition of receipt of funds for purposes of Section 99234, a local education agency shall certify that:

(1) Forty hours of professional development and 80 hours of followup instruction, coaching, or additional schoolsite assistance, in mathematics or reading, as appropriate, was provided to teachers who meet the criteria specified in paragraphs (1) and (2) of Section 99233.

(2) Forty hours of professional development in reading and an average of 80 hours of followup instruction, coaching, or additional schoolsite assistance was provided to teachers who meet the criteria

specified in paragraphs (3) and (4) of Section 99233, and 40 hours of professional development in mathematics and an average of 80 hours of followup instruction, coaching, or additional schoolsite assistance was provided to teachers who meet the criteria specified in paragraphs (5) and (6) of Section 99233.

(c) If, as the result of a program audit, it is found that the participating local education agency served less participants than it was funded to serve, the Superintendent of Public Instruction shall withhold from the local education agency's next monthly principal apportionment payment an amount proportional to the amount of funding associated with the number of teachers that were not served.

(d) If, as the result of a program audit, it is found that the training provided by the local education agency or the provider with whom it contracted did not meet the requirements of paragraph (4) of subdivision (a), the Superintendent of Public Instruction shall withhold from the local education agency's next monthly principal apportionment payment an amount equal to the amount of funding associated with the training that was not aligned to state standards and curriculum frameworks.

(e) In addition to receiving funding pursuant to this article, a school district, charter school, or county office of education may also claim funding under the Instructional Time and Staff Development Reform Program established pursuant to Article 7.5 (commencing with Section 44579) of Chapter 3 of Part 25 for the 80 hours of follow-up instruction, coaching, or additional schoolsite assistance required pursuant to subdivision (b) if the training meets the requirements of Section 44579.5.

(f) A local education agency may contract with one or more of the California Professional Development Institutes authorized pursuant to Article 2 (commencing with Section 99220) if the training provided by the institute meets the criteria of paragraph (2) of subdivision (a) and subdivision (b), and has been approved by the University of California. These local educational agencies shall receive funds as specified in paragraph (2) or (3) of subdivision (e) of Section 99234, as appropriate.

(g) The State Board of Education shall establish a procedure and criteria for local educational agencies to appeal to the board the findings of an audit conducted pursuant to this article. The board may reduce or eliminate the amount to be withheld pursuant to subdivision (d) if the board determines that the local educational agency was in substantial compliance with this section.

(h) It is the intent of the Legislature that audits referenced in subdivisions (c) and (d) be conducted as part of a compliance audit performed in accordance with Sections 14503, 14508, and 41020.

99238. (a) For the purpose of this article, the State Board of Education shall determine whether professional development programs that are not operated pursuant to Sections 99220 to 99226, inclusive, meet minimum criteria for quality specified in paragraph (4) of subdivision (a) of Section 99237 and subdivision (b) of Section 99237.

(b) The State Board of Education may contract for the review of certified assurances submitted pursuant to Section 99237.

99239. A local education agency or postsecondary institution that offers an accredited program of professional preparation may consider providing partial and proportional credit toward satisfaction of the course requirements to an enrolled candidate who satisfactorily completes a mathematics or reading professional development program as described in this article if the program has been certified by the Commission on Teacher Credentialing as meeting preparation standards.

99240. (a) By July 1, 2003, the State Department of Education, in cooperation with the University of California and the California Professional Development Institutes authorized pursuant to Article 2 (commencing with Section 99220), shall develop, and the State Board of Education shall review and approve, an interim report regarding the program established pursuant to this article for submission to the Legislature. The interim report shall, at a minimum, detail the following:

(1) The number of teachers, by credential type, who have received training offered pursuant to this article.

(2) The number of instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading who have received training offered pursuant to this article.

(3) The entities that have received funds for the purpose of offering training pursuant to this article and the number of teachers and instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading, respectively, that each has trained.

(b) By June 30, 2004, the State Department of Education shall submit, subject to review and approval by the State Board of Education, a final report 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 teachers, by credential type, who received training offered pursuant to this article.

(2) The number of instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading who received training offered pursuant to this article.

(3) The entities that received funds for the purpose of offering training pursuant to this article and the number of teachers and instructional aides

and paraprofessionals who directly assist with classroom instruction in mathematics and reading, respectively, that each has trained.

(4) Information detailing the effectiveness of the program established pursuant to this article. This information shall, at a minimum, incorporate survey data concerning program effectiveness that has been gathered from program participants and school principals.

(5) To the extent information is available, information detailing the retention rate, by credential type, of teachers who participated in training offered pursuant to this article. The information shall, at a minimum, incorporate sample data concerning teachers who are no longer in the profession.

(6) To the extent information is available, information detailing the retention rate of instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading who participated in training offered pursuant to this article. The information shall, at a minimum, incorporate sample data concerning aides who are no longer in the profession, as well as aides who have obtained a teacher credential subsequent to training.

99241. (a) Notwithstanding any other provision of law, if a local education agency elects to offer professional development pursuant to this article using the California Professional Development Institutes authorized pursuant to Article 2 (commencing with Section 99220), training may be provided to any teacher of kindergarten or any of grades 1 to 12, inclusive, if the University of California agrees to operate a combined schoolwide and districtwide program that meets the criteria specified in Section 99237.

(b) Notwithstanding any other provision of law, local education agencies that contract with the California Professional Development Institute authorized pursuant to Article 2 (commencing with Section 99220) may, pursuant to an agreement with the University of California, receive from the University of California funds appropriated pursuant to Article 2 (commencing with Section 99220) for the provision of stipends to participating teachers.

(c) Notwithstanding subdivision (e) of Section 99220, subdivision (d) of Section 99221, subdivision (d) of Section 99222, subdivision (e) of Section 99223, subdivision (d) of Section 99224, and subdivision (d) of Section 99225, the Professional Development Institutes authorized pursuant to Article 2 (commencing with Section 99220) may offer training at sites that are not located on a college or university campus.

99242. This article shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 11. (a) The sum of one million two hundred thousand dollars ($1,200,000) is hereby appropriated from the General Fund to the State Department of Education for purposes of the Mathematics and Reading Professional Development Program as set forth in Article 3 (commencing with Section 99230) of Chapter 5 of Part 65 of the Education Code, as follows:

(1) The sum of six hundred thousand dollars ($600,000) is available for expenditure for the 2001–02 fiscal year.

(2) The sum of six hundred thousand dollars ($600,000) is available for expenditure for the 2002–03 fiscal year.

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CHAPTER 738

An act to amend Sections 33334.2, 33334.3, 33334.4, and 33490 of, to amend, repeal, and add Section 33413 of, and to add Section 33411.5 to, the Health and Safety Code, relating to redevelopment.

[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 that provisions of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code) that have required housing units to be available at affordable housing cost to persons and families of very low, low, or moderate income have also required these units to be occupied by these same persons and families. Thus, the Legislature finds and declares that the addition of the phrase ''occupied by'' within this act is declaratory of existing law.

SEC. 2. 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 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, 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 which can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with the provisions of Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions which are directly related to programs or activities authorized under subdivision (e) of this section.

(C) The authority for making the finding specified in this paragraph shall expire on June 30, 1993, except that the expiration shall not be deemed to impair contractual obligations to bondholders or private entities incurred prior to May 1, 1991, and made in reliance on the provisions of this paragraph. Agencies 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 of Housing and Community Development a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding that the community is making a

substantial effort to meet its existing and projected housing needs. Agencies 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 of Housing and Community Development 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 which is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan

was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

SEC. 2.1. 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 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, 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 which can be reasonably foreseen because of displacement of persons and families of low or moderate income or very low income households from within, or adjacent to, the project area, because of increased employment opportunities, or because of any other direct or indirect result of implementation of the redevelopment plan. No finding under this subdivision may be made until the community has provided or ensured the availability of replacement dwelling units as defined in Section 33411.2 and until it has complied with the provisions of Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions 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 of Housing and Community Development 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 which is added to a project by an amendment to a redevelopment plan, which amendment is adopted on or after the effective date of this section. An agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project for which a redevelopment plan

was adopted prior to January 1, 1977, subject to any indebtedness incurred prior to the election.

SEC. 2.2. 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. 2.3. 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 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 a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 2.4. 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, 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 the

provisions of 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 of Housing and Community Development a copy of the finding, including the factual information supporting the finding and other factual information in the housing element that demonstrates that either (1) the community does not need to increase, improve, or preserve the supply of housing for low- and moderate-income households, including very low income households, or (2) a percentage less than 20 percent will be sufficient to meet the community's need to improve, increase, and preserve the supply of housing for low- and moderate-income households, including very low income households. Within 10 days following the making of a finding under paragraph (3) of subdivision (a), the agency shall send the Department of Housing and Community Development a copy of the finding, including the factual information supporting the finding that the community is making a substantial effort to meet its existing and projected housing needs. Agencies 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 of Housing and Community Development 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. 2.5. 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, 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 the provisions of Article 9 (commencing with Section 33410).

(B) In making the determination that other financial contributions are equivalent in impact pursuant to this subdivision, the agency shall include only those financial contributions 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 of Housing and Community Development 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 become operative on January 1, 2005.

SEC. 3. Section 33334.3 of the Health and Safety Code is amended to read:

33334.3. (a) The funds that are required by Section 33334.2 or 33334.6 to be used for the purposes of increasing and improving the community's supply of low- and moderate-income housing shall be held in a separate Low and Moderate Income Housing Fund until used.

(b) Any interest earned by the Low and Moderate Income Housing Fund and any repayments or other income to the agency for loans, advances, or grants, of any kind from the Low and Moderate Income Housing Fund, shall accrue to and be deposited in, the fund and may only be used in the manner prescribed for the Low and Moderate Income Housing Fund.

(c) The moneys in the Low and Moderate Income Housing Fund shall be used to increase, improve, and preserve the supply of low- and moderate-income housing within the territorial jurisdiction of the agency.

(d) It is the intent of the Legislature that the Low and Moderate Income Housing Fund be used to the maximum extent possible to defray the costs of production, improvement, and preservation of low- and moderate-income housing and that the amount of money spent for

planning and general administrative activities associated with the development, improvement, and preservation of that housing not be disproportionate to the amount actually spent for the costs of production, improvement, or preservation of that housing. The agency shall determine annually that the planning and administrative expenses are necessary for the production, improvement, or preservation of low- and moderate-income housing.

(e) (1) Planning and general administrative costs which may be paid with moneys from the Low and Moderate Income Housing Fund are those expenses incurred by the agency which are directly related to the programs and activities authorized under subdivision (e) of Section 33334.2 and are limited to the following:

(A) Costs incurred for salaries, wages, and related costs of the agency's staff or for services provided through interagency agreements, and agreements with contractors, including usual indirect costs related thereto.

(B) Costs incurred by a nonprofit corporation which are not directly attributable to a specific project.

(2) Legal, architectural, and engineering costs and other salaries, wages, and costs directly related to the planning and execution of a specific project which are authorized under subdivision (e) of Section 33334.2 and which are incurred by a nonprofit housing sponsor are not planning and administrative costs for the purposes of this section, but are instead project costs.

(f) (1) The requirements of this subdivision apply to all new or substantially rehabilitated housing units developed or otherwise assisted, with moneys from the Low and Moderate Income Housing Fund, pursuant to an agreement approved by an agency on or after January 1, 1988. Except to the extent a longer period of time may be required by other provisions of law, the agency shall require that housing units subject to this subdivision shall remain available at affordable housing costs to, and are occupied by, persons and families of low or moderate income and very low income households for the longest feasible time, but for not less than the following periods of time:

(A) Fifty-five years for rental units. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (A) the replacement units are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (B) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(B) Forty-five years for owner-occupied units. However, the agency may permit sales of owner-occupied units prior to the expiration of the 45-year period for a price in excess of that otherwise permitted under this

subdivision pursuant to an adopted program which protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program which establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited in the Low and Moderate Income Housing Fund. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(C) If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(2) The agency shall require the recording in the office of the county recorder of covenants or restrictions implementing this subdivision for each parcel or unit of real property subject to this subdivision. Notwithstanding any other provision of law, the covenants or restrictions shall run with the land and shall be enforceable, against the original owner and successors in interest, by the agency or the community.

(g) ''Housing,'' as used in this section, includes residential hotels, as defined in subdivision (k) of Section 37912. The definitions of ''lower income households'' and ''very low income households'' in Sections 50079.5 and 50105 shall apply to this section. ''Longest feasible time,'' as used in this section, includes, but is not limited to, unlimited duration.

(h) ''Increasing, improving, and preserving the community's supply of low- and moderate-income housing,'' as used in this section and in Section 33334.2, includes the preservation of rental housing units assisted by federal, state, or local government on the condition that units remain affordable to, and occupied by, low- and moderate-income households, including very low income households, for a specified period of time, beyond the date the subsidies and use restrictions could be terminated and the assisted housing units converted to market rate rentals. In preserving these units the agency shall require the units remain affordable to, and occupied by, persons and families of low- and moderate-income and very low income households for the longest feasible time. However, the agency may replace rental units with equally affordable and comparable rental units in another location within the community if (1) the replacement units in another location are available for occupancy prior to the displacement of any persons and families of low or moderate income residing in the units to be replaced and (2) the comparable replacement units are not developed with moneys from the Low and Moderate Income Housing Fund.

(i) Agencies that have more than one project area may satisfy the requirements of Sections 33334.2 and 33334.6 and of this section by

allocating, in any fiscal year, less than 20 percent in one project area, if the difference between the amount allocated and the 20 percent required is instead allocated, in that same fiscal year, to the Low and Moderate Income Housing Fund from tax increment revenues from other project areas. Prior to allocating funds pursuant to this subdivision, the agency shall make the finding required by subdivision (g) of Section 33334.2.

(j) Funds from the Low and Moderate Income Housing Fund shall not be used to the extent that other reasonable means of private or commercial financing of the new or substantially rehabilitated units at the same level of affordability and quantity are reasonably available to the agency or to the owner of the units. Prior to the expenditure of funds from the Low and Moderate Income Housing Fund for new or substantially rehabilitated housing units, where those funds will exceed 50 percent of the cost of producing the units, the agency shall find, based on substantial evidence, that the use of the funds is necessary because the agency or owner of the units has made a good faith attempt but been unable to obtain commercial or private means of financing the units at the same level of affordability and quantity.

SEC. 4. Section 33334.4 of the Health and Safety Code is amended to read:

33334.4. (a) Except as specified in subdivision (b), each agency shall expend, over the duration of the redevelopment implementation plan, the moneys in the Low and Moderate Income Housing Fund to assist housing for persons of low income and housing for persons of very low income in at least the same proportion as the total number of housing units needed for each of those income groups bears to the total number of units needed for persons of moderate, low, and very low income within the community, as those needs have been determined for the community pursuant to Section 65584 of the Government Code. In determining compliance with this obligation, the agency may adjust the proportion by subtracting from the need identified for each income category, the number of units for persons of that income category that are newly constructed over the duration of the implementation plan with other locally controlled government assistance and without agency assistance and that are required to be affordable to, and occupied by, persons of the income category for at least 55 years for rental housing and 45 years for ownership housing, except that in making an adjustment the agency may not subtract units developed pursuant to a replacement housing obligation under state or federal law. Each agency shall expend, over the duration of each redevelopment implementation plan, the moneys in the Low and Moderate Income Housing Fund to assist housing that is available to families with children in at least the same proportion as the population under age 65 years bears to the total

population of the community as reported in the most recent census of the United States Census Bureau.

(b) An agency that has deposited in the Low and Moderate Income Housing Fund over the first five years of the period of an implementation plan an aggregate that is less than two million dollars ($2,000,000) shall have an extra five years to meet the requirements of this section.

SEC. 5. Section 33411.5 is added to the Health and Safety Code, to read:

33411.5. Whenever all or any portion of a redevelopment project is developed with very low, low-, or moderate-income housing units, and whenever any very low, low-, or moderate-income housing units are developed with any agency assistance or pursuant to Section 33413, the agency shall require by contract or other appropriate means that this housing be made available for rent or purchase to the persons and families of low or moderate income displaced by the redevelopment project. These persons and families shall be given priority in renting or buying that housing. However, failure to give that priority shall not affect the validity of the title to real property. The agency shall keep a list of persons and families of low or moderate income displaced by the redevelopment project who are to be given priority and may establish reasonable rules for determining the order or priority on the list.

SEC. 6. Section 33413 of the Health and Safety Code, as amended by Section 3 of Chapter 756 of the Statutes of 2000, is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed on or after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to persons in the same or a lower income category (low, very low, or moderate), as the persons displaced from those destroyed or removed units.

(b) (1) At least 30 percent of all new and substantially rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to persons and families of low or moderate income and shall be occupied by these persons and families. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) At least 15 percent of all new and substantially rehabilitated dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to persons and families of low or moderate income and shall be occupied by these persons and families. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to very low income households and shall be occupied by these persons and families.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing costs, to persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have been required to be available inside a project area.

(iii) On or after January 1, 2002, as used in this paragraph and in paragraph (1), ''substantially rehabilitated dwelling units'' means substantially rehabilitated, with agency assistance, multifamily rented dwelling units with three or more units, or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units. Prior to January 1, 2002, ''substantially rehabilitated dwelling units'' shall mean substantially rehabilitated multifamily rented dwelling units with three or more units or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units.

(iv) As used in this paragraph and in paragraph (1), ''substantial rehabilitation'' means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

(v) To satisfy this paragraph, the agency may aggregate new or substantially rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase, or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable 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.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons and families of low or very low income, for the longest feasible time but not less than 55 years for rental units and 45 years for owner-occupied units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply, in the aggregate, to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units, unless an agency determines otherwise.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements

during the next 10-year period. The plan shall contain the contents required by paragraphs (2) and (3) of subdivision (a) of Section 33490.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price-restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to persons and families of low-income, moderate-income, and very low income households, respectively, and remain occupied by those persons and families for the longest feasible time, but for not less than 55 years for rental units and 45 years for home ownership units, except for the following:

(1) The agency may permit sales of owner-occupied units prior to the expiration of the 45-year period established by the agency for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency, and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale of units pursuant to this subparagraph, expend funds to make affordable an equal number of units at the same income level as units sold pursuant to this subparagraph.

(2) The requirements of this subdivision shall be made enforceable in the same manner as provided in paragraph (2) of subdivision (f) of Section 33334.3.

(3) If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas that are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income

are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) ''Longest feasible time,'' as used in this section, includes, but is not limited to, unlimited duration.

(h) This section shall remain in effect only until January 1, 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. 6.5. Section 33413 of the Health and Safety Code, as amended by Section 3 of Chapter 756 of the Statutes of 2000, is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed on or after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to persons in the same or a lower

income category (low, very low, or moderate), as the persons displaced from those destroyed or removed units.

(b) (1) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2 and 33333.6, at least 30 percent of all new and substantially rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to persons and families of low or moderate income and shall be occupied by these persons and families. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Section 33333.2 and 33333.6, at least 15 percent of all new and substantially rehabilitated dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to persons and families of low or moderate income and shall be occupied by these persons and families. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to very low income households and shall be occupied by these persons and families.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing costs, to persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have been required to be available inside a project area.

(iii) On or after January 1, 2002, as used in this paragraph and in paragraph (*l*), ''substantially rehabilitated dwelling units'' means substantially rehabilitated, with agency assistance, multifamily rented dwelling units with three or more units, or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units. Prior to January 1, 2002, ''substantially rehabilitated dwelling units'' shall mean substantially rehabilitated multifamily rented dwelling units with three or more units or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units.

(iv) As used in this paragraph and in paragraph (1), ''substantial rehabilitation'' means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

(v) To satisfy this paragraph, the agency may aggregate new or substantially rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase, or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable 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.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons and families of low or very low income, for the longest feasible time but not less than 55 years for rental units and 45 years for owner-occupied units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply, in the aggregate, to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units, unless an agency determines otherwise.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year

period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2) and (3) of subdivision (a) of Section 33490.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price-restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to persons and families of low-income, moderate-income, and very low income households, respectively, and remain occupied by those persons and families for the longest feasible time, but for not less than 55 years for rental units and 45 years for home ownership units, except for the following:

(1) The agency may permit sales of owner-occupied units prior to the expiration of the 45-year period established by the agency for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency, and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale of units pursuant to this subparagraph, expend funds to make affordable an equal number of units at the same income level as units sold pursuant to this subparagraph.

(2) The requirements of this subdivision shall be made enforceable in the same manner as provided in paragraph (2) of subdivision (f) of Section 33334.3.

(3) If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas that are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section

applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976. In addition, subdivision (b) shall apply to redevelopment plans adopted prior to January 1, 1976, for which an amendment is adopted pursuant to Section 33333.10, except that subdivision (b) shall apply to those redevelopment plans prospectively only so that the requirements of subdivision (b) shall apply only to new and substantially rehabilitated dwelling units for which the building permits are issued on or after the date that the ordinance adopting the amendment pursuant to Section 33333.10 becomes effective.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) ''Longest feasible time,'' as used in this section, includes, but is not limited to, unlimited duration.

(h) This section shall remain in effect only until January 1, 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. 7. Section 33413 is added to the Health and Safety Code, to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of

replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing cost within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost to, and occupied by, persons in the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to, and occupied by, persons in the same or a lower income category (low, very low, or moderate) as the persons displaced from those destroyed or removed units.

(b) (1) At least 30 percent of all new or rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) At least 15 percent of all new or rehabilitated dwelling units developed within the project area by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing cost to, and occupied by, persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have had to be available inside a project area.

(iii) To satisfy the provisions of this paragraph, the agency may aggregate new or rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of long-term affordability covenants on multifamily units that restrict the cost of

renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable 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.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons and families of low or very low income, for the longest feasible time but not less than 55 years for rental units and 45 years for owner-occupied units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase of acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply in the aggregate to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2) and (3) of subdivision (a) of Section 33490.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price-restricted pursuant to subdivision (a) or (b) remain

available at affordable housing cost to, and occupied by, persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, but for not less than 55 years for rental units and 45 years for home ownership units, except for the following:

(1) The agency may permit sales of owner-occupied units prior to the expiration of the 45-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale of units under this paragraph, expend funds to make affordable an equal number of units at the same income level as units sold under this paragraph. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(2) The requirements of this subdivision shall be made enforceable in the same manner as provided in paragraph (2) of subdivision (f) of Section 33334.3.

If land on which dwelling units required by this section are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas which are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each

dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) ''Longest feasible time,'' as used in this section, includes, but is not limited to, unlimited duration.

(h) This section shall become operative on January 1, 2006.

SEC. 7.5. Section 33413 is added to the Health and Safety Code, to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing cost within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost to, and occupied by, persons in the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to, and occupied by, persons in the same or a lower income category (low, very low, or moderate) as the persons displaced from those destroyed or removed units.

(b) (1) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2 and

33333.6, at least 30 percent of all new or rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2 and 33333.6, at least 15 percent of all new or rehabilitated dwelling units developed within the project area by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing cost to, and occupied by, persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have had to be available inside a project area.

(iii) To satisfy the provisions of this paragraph, the agency may aggregate new or rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable 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.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons and families of low or very low income, for the longest feasible time but

not less than 55 years for rental units and 45 years for owner-occupied units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase of acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply in the aggregate to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2) and (3) of subdivision (a) of Section 33490.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price-restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to, and occupied by, persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, but for not less than 55 years for rental units and 45 years for home ownership units, except for the following:

(1) The agency may permit sales of owner-occupied units prior to the expiration of the 45-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the

length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale of units under this paragraph, expend funds to make affordable an equal number of units at the same income level as units sold under this paragraph. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(2) The requirements of this subdivision shall be made enforceable in the same manner as provided in paragraph (2) of subdivision (f) of Section 33334.3.

If land on which dwelling units required by this section are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas which are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976. In addition, subdivision (b) shall apply to redevelopment plans adopted prior to January 1, 1976, for which an amendment is adopted pursuant to Section 33333.10, except that subdivision (b) shall apply to those redevelopment plans prospectively only so that the requirements of subdivision (b) shall apply only to new and substantially rehabilitated dwelling units for which the building permits are issued on or after the date that the ordinance adopting the amendment pursuant to Section 33333.10 becomes effective.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) ''Longest feasible time,'' as used in this section, includes, but is not limited to, unlimited duration.

(h) This section shall become operative on January 1, 2006.

SEC. 8. Section 33490 of the Health and Safety Code is amended to read:

33490. (a) (1) (A) On or before December 31, 1994, and each five years thereafter, each agency that has adopted a redevelopment plan prior to December 31, 1993, shall adopt, after a public hearing, an implementation plan that shall contain the specific goals and objectives of the agency for the project area, the specific programs, including potential projects, and estimated expenditures proposed to be made during the next five years, and an explanation of how the goals and objectives, programs, and expenditures will eliminate blight within the project area and implement the requirements of Sections 33334.2, 33334.4, 33334.6, and 33413. After adoption of the first implementation plan, the parts of the implementation plan that address Sections 33334.2, 33334.4, 33334.6, and 33413 shall be adopted every five years either in conjunction with the housing element cycle or the implementation plan cycle. The agency may amend the implementation plan after conducting a public hearing on the proposed amendment. If an action attacking the adoption, approval, or validity of a redevelopment plan adopted prior to January 1, 1994, has been brought pursuant to Chapter 5 (commencing with Section 33500), the first implementation plan required pursuant to this section shall be adopted within six months after a final judgment or order has been entered. Subsequent implementation plans required pursuant to this section shall be adopted pursuant to the terms of this section, and as if the first implementation plan had been adopted on or before December 31, 1994.

(B) Adoption of an implementation plan shall not constitute an approval of any specific program, project, or expenditure and shall not change the need to obtain any required approval of a specific program, project, or expenditure from the agency or community. The adoption of an implementation plan shall not constitute a project within the meaning of Section 21000 of the Public Resources Code. However, the inclusion

of a specific program, potential project, or expenditure in an implementation plan prepared pursuant to subdivision (c) of Section 33352 in conjunction with a redevelopment plan adoption shall not eliminate analysis of those programs, potential projects, and expenditures in the environmental impact report prepared pursuant to subdivision (k) of Section 33352 to the extent that it would be otherwise required. In addition, the inclusion of programs, potential projects, and expenditures in an implementation plan shall not eliminate review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), at the time of the approval of the program, project, or expenditure, to the extent that it would be otherwise required.

(2) (A) A portion of the implementation plan shall address the agency housing responsibilities and shall contain a section addressing Sections 33334.2, 33334.4, and 33334.6, the Low and Moderate Income Housing Fund, and, if subdivision (b) of Section 33413 applies, a section addressing agency-developed and project area housing. The section addressing the Low and Moderate Income Housing Fund shall contain:

(i) The amount available in the Low and Moderate Income Housing Fund and the estimated amounts which will be deposited in the Low and Moderate Income Housing Fund during each of the next five years.

(ii) A housing program with estimates of the number of new, rehabilitated, or price-restricted units to be assisted during each of the five years and estimates of the expenditures of moneys from the Low and Moderate Income Housing Fund during each of the five years.

(B) For each project area to which subdivision (b) of Section 33413 applies, the section addressing the agency developed and project area housing shall contain:

(i) Estimates of the number of new, substantially rehabilitated or price-restricted residential units to be developed or purchased within one or more project areas, both over the life of the plan and during the next 10 years.

(ii) Estimates of the number of units of very low, low-, and moderate-income households required to be developed within one or more project areas in order to meet the requirements of paragraph (2) of subdivision (b) of Section 33413, both over the life of the plan and during the next 10 years.

(iii) The number of units of very low, low-, and moderate-income households which have been developed within one or more project areas which meet the requirements of paragraph (2) of subdivision (b) of Section 33413.

(iv) Estimates of the number of agency developed residential units which will be developed during the next five years, if any, which will be governed by paragraph (1) of subdivision (b) of Section 33413.

(v) Estimates of the number of agency developed units for very low, low-, and moderate-income households which will be developed by the agency during the next five years to meet the requirements of paragraph (1) of subdivision (b) of Section 33413.

(C) The section addressing Section 33334.4 shall contain all of the following:

(i) The number of housing units needed for very low income persons, low-income persons, and moderate-income persons as each of those needs have been identified in the most recent determination pursuant to Section 65584 of the Government Code, and the proposed amount of expenditures from the Low and Moderate Income Housing Fund for each income group during each year of the implementation plan period.

(ii) The total population of the community and the population under age 65 as reported in the most recent census of the United States Census Bureau.

(iii) A housing program that provides a detailed schedule of actions the agency is undertaking or intends to undertake to ensure expenditure of the Low and Moderate Income Housing Fund in the proportions required by Section 33334.4.

(iv) For the previous implementation plan period, the amounts of Low and Moderate Income Housing Fund moneys utilized to assist units affordable to and occupied by very low income households and low-income households; the number, location, and level of affordability of units newly constructed with other locally controlled government assistance and without agency assistance and that are required to be affordable to, and occupied by, persons of low or very low income for at least 55 years for rental housing or 45 years for ownership housing; and the amount of Low and Moderate Income Housing Fund moneys utilized to assist housing units available to families with children, and the number, location, and level of affordability of those units.

(3) If the implementation plan contains a project that will result in the destruction or removal of dwelling units that will have to be replaced pursuant to subdivision (a) of Section 33413, the implementation plan shall identify proposed locations suitable for those replacement dwelling units.

(b) For a project area for which a redevelopment plan is adopted on or after January 1, 1994, the implementation plan prepared pursuant to subdivision (c) of Section 33352 shall constitute the initial implementation plan and thereafter the agency after a public hearing shall adopt an implementation plan every five years commencing with the fifth year after the plan has been adopted. Agencies may adopt implementation plans that include more than one project area.

(c) Every agency, at least once within the five-year term of the plan, shall conduct a public hearing and hear testimony of all interested parties

for the purpose of reviewing the redevelopment plan and the corresponding implementation plan for each redevelopment project within the jurisdiction and evaluating the progress of the redevelopment project. The hearing required by this subdivision shall take place no earlier than two years and no later than three years after the adoption of the implementation plan. An agency may hold one hearing for two or more project areas if those project areas are included within the same implementation plan.

(d) Notice of public hearings conducted pursuant to this section shall be published pursuant to Section 6063 of the Government Code and posted in at least four permanent places within the project area for a period of three weeks. Publication and posting shall be completed not less than 10 days prior to the date set for hearing.

SEC. 9. (a) Section 2.1 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, and (3) SB 459 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 661, in which case Sections 2, 2.2, 2.3, 2.4, and 2.5 of this bill shall not become operative.

(b) Sections 2.2 and 2.4 of this bill incorporate amendments to Section 33334.2 of the Health and Safety Code proposed by both this bill and SB 459. Sections 2.2 and 2.4 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 SB 459, in which case Sections 2, 2.1, 2.3, and 2.5 of this bill shall not become operative.

(c) Sections 2.3 and 2.5 of this bill incorporate amendments to Section 33334.2 of the Health and Safety Code proposed by this bill, AB 661, and SB 459. Sections 2.3 and 2.5 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 661 and SB 459, in which case Sections 2, 2.1, 2.2, and 2.4 of this bill shall not become operative.

SEC. 10. Sections 6.5 and 7.5 of this bill incorporate amendments to Section 33413 of the Health and Safety Code proposed by both this bill and SB 211. Sections 6.5 and 7.5 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 33413 of the Health and Safety Code, and

(3) this bill is enacted after SB 211, in which case Sections 6 and 7 of this bill shall not become operative.

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## CHAPTER 739

An act to amend Section 635 of the Streets and Highways Code, and to amend Sections 545.1, 1675, 1677, 11212, 11222, 11715, 14900.1, 16000, 16050, 16051, 16052, 16054, 16054.2, 16055, 16070, 23103, and 25108 of, and to amend the heading of Article 3 (commencing with Section 16050) of Chapter 1 of Division 7 of, to add Section 24616 to, and to repeal Sections 15250.5 and 15255 of, the Vehicle Code, relating to transportation.

[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 635 of the Streets and Highways Code is amended to read:

635. (a) State Highway Route 1 from Las Cruces to San Francisco shall be known and designated as the ''Cabrillo Highway.''

(b) State highway routes embracing portions of Routes 280, 82, 238, 101, 5, 72, 12, 37, 121, 87, 162, 185, 92, and 123 and connecting city streets and county roads thereto, and extending in a continuous route from Sonoma southerly to the international border and near the route historically known as El Camino Real shall be known and designated as ''El Camino Real.''

(c) State Highway Route 1 from south of San Juan Capistrano to near El Rio shall be known and designated as the ''Pacific Coast Highway.''

SEC. 2. Section 545.1 of the Vehicle Code is amended to read:

545.1. (a) Notwithstanding Section 545, a motor vehicle is not a schoolbus if it is operated for the purpose of transporting any pupil to or from a community college or to or from activities at that college, irrespective of the age of the pupil or the grade level of the pupil, if the pupil is a current enrollee in classes of the college providing the transportation.

(b) A driver of a motor vehicle that meets the criteria established by subdivision (a) shall escort pupils as required by subdivision (d) of Section 22112 and shall meet the requirements of Section 12517.

(c) This section shall apply to a community college district that includes within its boundaries one or more counties, each of which has a population of 250,000 or less.

SEC. 3. Section 1675 of the Vehicle Code is amended to read:

1675. (a) The director shall establish standards and develop criteria for the approval of driver improvement courses specifically designed for the safe driving needs of drivers who are 55 years of age or older, which shall be known as the mature driver improvement course.

(b) The curriculum for the course provided for in subdivision (a) shall include, but is not limited to, all of the following components:

(1) How impairment of visual and audio perception affects driving performance and how to compensate for that impairment.

(2) The effects of fatigue, medications, and alcohol on driving performance, when experienced alone or in combination, and precautionary measures to prevent or offset ill effects.

(3) Updates on rules of the road and equipment, including, but not limited to, safety belts and safe and efficient driving techniques under present day road and traffic conditions.

(4) How to plan travel time and select routes for safety and efficiency.

(5) How to make crucial decisions in dangerous, hazardous, and unforeseen situations.

(c) Each mature driver improvement course shall include not less than 400 minutes of instruction, and shall not exceed 25 students per single day of instruction or 30 students per two days of instruction.

(d) Upon satisfactory completion of the mature driver improvement course, participants shall receive and retain a certificate provided by the department, awarded and distributed by the course provider, which shall be suitable evidence of satisfactory course completion, and eligibility for three years, from the date of completion, for the mature driver vehicle liability insurance premium reduction pursuant to Section 11628.3 of the Insurance Code.

(e) The certificate may be renewed every three years from the date of completion by successfully completing a subsequent mature driver improvement course.

(f) For the purposes of this section, and Sections 1676 and 1677, ''course provider'' means any person offering a mature driver improvement course approved by the department pursuant to subdivision (a).

SEC. 4. Section 1677 of the Vehicle Code is amended to read:

1677. (a) The department may collect a fee, to be determined by the department, from each course provider who shall be responsible for the development and operation of a mature driver improvement course, for the approval of the course, but not to exceed the actual cost of approval of the course. The department shall transmit all fees it receives for deposit in the Motor Vehicle Account in the State Transportation Fund pursuant to Section 42270.

(b) Each course provider, who has received course approval from the department, is responsible for the delivery, instruction, and content of his or her mature driver improvement course.

(c) The department shall investigate claims of impropriety on the part of a course provider. The department may withdraw the approval of courses in violation of Section 1675 or 1676, as determined by the department, for just cause, including, but not limited to any of the following:

(1) Furnishing course completion certificates to course enrollees prior to, or in the absence of, completion of the curriculum specified in subdivisions (b) and (c) of Section 1675.

(2) Charging fees in excess of the amounts specified in subdivisions (a) and (c) of Section 1676.

(d) Mature driver improvement courses approved by the department shall continue to be approved until either of the following occurs:

(1) The course provider does not meet the conditions of approval.

(2) The department finds just cause to terminate the approval pursuant to subdivision (c).

SEC. 5. Section 11212 of the Vehicle Code is amended to read:

11212. (a) Every owner licensed under this chapter shall keep a record at the traffic violator school's primary business location showing all of the following for each student:

(1) The name and address and license number of the traffic violator school providing instruction.

(2) The name and address of each person given instruction.

(3) The instruction permit number or driver's license number of every person given instruction.

(4) The name and number of the license issued pursuant to Section 11207 of the traffic violator school instructor.

(5) The particular type of instruction given and the date or dates of the instruction.

(6) A statement as to whether the approved lesson plan was followed.

(7) The total number of hours of instruction.

(8) The total cost to the student of the instruction, which shall not exceed the amount of the fee represented or advertised by the traffic violator school at the time of the student's enrollment.

(9) The court docket number under which the student was referred to a traffic violator school.

(10) The number of the completion certificate issued to the student pursuant to subdivision (e) of Section 11208 and, if different, the number of any copy thereof issued to the student.

(b) The records shall be retained for a minimum of three years and shall be open to the inspection during business hours and at all other reasonable times by the department, the court, a private entity providing

monitoring pursuant to Section 11222, the Legislative Analyst, and the State Auditor or authorized employees thereof, but shall be only for confidential use.

(c) Whenever a licensee suspends or terminates the licensed activity, the licensee shall surrender the records specified in subdivision (a) to the department for examination not later than the end of the third day, excluding Saturdays, Sundays, and legal holidays, after the date of suspension or termination. The department may duplicate or make a record of any information contained therein. All these records shall be returned to the licensee not later than 30 days after the date of surrender.

(d) The address of any person kept pursuant to paragraph (2) of subdivision (a) shall only be used by the school for school administrative purposes.

SEC. 6. Section 11222 of the Vehicle Code is amended to read:

11222. The department may contract with a nongovernmental entity to administer any part of this chapter, subject to limitations in other laws regarding contracting out for services. No contract shall exceed three years' duration. The contracting entity, and any affiliate or subsidiary thereof monitoring traffic violator schools, shall conform to all of the following requirements:

(a) Engage in no other business activity with traffic violator schools or any of the principals of the traffic violator schools, including the provision of services or supplies.

(b) Provide reports in statistical form to the department and to the Legislature as instructed by the department. These reports shall be issued not less frequently than annually.

(c) Make its records available for inspection by authorized representatives of the department, the Legislative Analyst, and the State Auditor.

SEC. 6.5. Section 11715 of the Vehicle Code is amended to read:

11715. (a) A manufacturer, remanufacturer, distributor, or dealer owning or lawfully possessing any vehicle of a type otherwise required to be registered under this code may operate or move the vehicle upon the highways without registering the vehicle upon condition that the vehicle displays special plates issued to the owner as provided in this chapter, in addition to other license plates or permits already assigned and attached to the vehicle in the manner prescribed in Sections 5200 to 5203, inclusive. A vehicle for sale or lease by a dealer may also be operated or moved upon the highways without registration for a period not to exceed seven days by a prospective buyer or lessee who is test-driving the vehicle for possible purchase or lease, if the vehicle is in compliance with this condition. The vehicle may also be moved or operated for the purpose of towing or transporting by any lawful method other vehicles.

(b) A transporter may operate or move any owned or lawfully possessed vehicle of like type by any lawful method upon the highways solely for the purpose of delivery, upon condition that there be displayed upon each vehicle in contact with the highway special license plates issued to the transporter as provided in this chapter, in addition to any license plates or permits already assigned and attached to the vehicle in the manner prescribed in Sections 5200 to 5203, inclusive. The vehicles may be used for the purpose of towing or transporting by any lawful method other vehicles when the towing or transporting vehicle is being delivered for sale or to the owner thereof.

(c) This section does not apply to any manufacturer, remanufacturer, transporter, distributor, or dealer operating or moving a vehicle as provided in Section 11716.

(d) This section does not apply to work or service vehicles owned by a manufacturer, remanufacturer, transporter, distributor, or dealer. This section does not apply to vehicles owned and leased by dealers, except those vehicles rented or leased to vehicle salespersons in the course of their employment for purposes of display or demonstration, nor to any unregistered vehicles used to transport more than one load of other vehicles for the purpose of sale.

(e) This section does not apply to vehicles currently registered in this state that are owned and operated by a licensed dealer when the notice of transfer has been forwarded to the department by the former owner of record pursuant to Section 5900 and when a copy of the notice is displayed as follows:

(1) For a motorcycle or motor-driven cycle, the notice is displayed in a conspicuous manner upon the vehicle.

(2) For a vehicle other than a motorcycle or motor-driven cycle, the notice is displayed in the lower right-hand corner of the windshield of the vehicle, as specified in paragraph (3) of subdivision (b) of Section 26708.

(f) Every owner, upon receipt of a registration card issued for special plates, shall maintain the same or a facsimile copy thereof with the vehicle bearing the special plates.

SEC. 7. Section 14900.1 of the Vehicle Code is amended to read:

14900.1. Except as provided in Sections 15250.6 and 15255.1, upon application for the renewal of a driver's license or for a license to operate a different class of vehicle, there shall be paid to the department a fee of fifteen dollars ($15) for a license that will expire on the fifth birthday of the applicant following the date of the application. The payment of the fee entitles the person paying the fee to apply for a driver's license and to take three examinations within a period of 12 months from the date of the application or during the period that an instruction permit is valid, as provided in Section 12509.

SEC. 8. Section 15250.5 of the Vehicle Code is repealed.

SEC. 9. Section 15255 of the Vehicle Code is repealed.

SEC. 10. Section 16000 of the Vehicle Code is amended to read:

16000. (a) The driver of every motor vehicle who is in any manner involved in an accident originating from the operation of a motor vehicle on any street or highway or any reportable off-highway accident defined in Section 16000.1 that has resulted in damage to the property of any one person in excess of five hundred dollars ($500) or in bodily injury or in the death of any person shall, within 10 days after the accident, report the accident, either personally or through an insurance agent, broker, or legal representative, on a form approved by the department to the office of the department at Sacramento, subject to the provisions of this chapter. The driver shall identify on the form, by name and current residence address, if available, any person involved in the accident complaining of bodily injury.

(b) A report is not required pursuant to subdivision (a) if the motor vehicle involved in the accident was owned or leased by, or under the direction of, the United States, this state, another state, or a local agency.

(c) If none of the parties involved in an accident has reported the accident to the department within one year following the date of the accident, the department shall not be required to file the report, and the driver license suspension requirements of Section 16004 or 16070 shall not apply.

SEC. 11. The heading of Article 3 (commencing with Section 16050) of Chapter 1 of Division 7 of the Vehicle Code is amended to read:

Article 3. Evidence of Financial Responsibility

SEC. 12. Section 16050 of the Vehicle Code is amended to read:

16050. In order to establish evidence of financial responsibility, every driver or employer involved in an accident and required to report the accident under Section 16000 shall establish to the satisfaction of the department that the provisions of this article are applicable to his or her responsibilities arising out of the accident.

SEC. 13. Section 16051 of the Vehicle Code is amended to read:

16051. Evidence may be established by filing a report indicating that the motor vehicle involved in the accident was owned or leased by or under the direction of the United States, this state, or any political subdivision of this state or municipality thereof.

SEC. 14. Section 16052 of the Vehicle Code is amended to read:

16052. Evidence may be established if the owner of the motor vehicle involved in the accident was a self-insurer. Any person in whose name more than 25 motor vehicles are registered may qualify as a

self-insurer by obtaining a certificate of self-insurance issued by the department as provided in this article.

SEC. 15. Section 16054 of the Vehicle Code is amended to read:

16054. (a) Evidence may be established by filing with the department satisfactory documentation:

(1) That the owner had an automobile liability policy, a motor vehicle liability policy, or bond in effect at the time of the accident with respect to the driver or the motor vehicle involved in the accident, unless it is established that at the time of the accident the motor vehicle was being operated without the owner's permission, express or implied, or was parked by a driver who had been operating the vehicle without permission.

(2) That the driver of the motor vehicle involved in the accident, if he or she was not the owner of the motor vehicle, had in effect at the time of the accident an automobile liability policy or bond with respect to his or her operation of the motor vehicle not owned by him or her.

(3) That the liability as may arise from the driver's operation of the motor vehicle involved in the accident is, in the judgment of the department, covered by some form of liability insurance or bond.

(4) That the owner or driver, if he or she is involved in an accident while operating a vehicle of less than four wheels, had in effect at the time of the accident with respect to the driver or vehicle a liability policy or bond that meets the requirements of Section 16056.

(b) Any automobile liability policy or bond referred to in this section shall comply with the requirements of Section 16056 and Sections 11580, 11580.011, 11580.1, and 11580.2 of the Insurance Code, but need not contain provisions other than those required by those sections, and shall not be governed by Chapter 3 (commencing with Section 16430).

SEC. 16. Section 16054.2 of the Vehicle Code is amended to read:

16054.2. Evidence may also be established by any of the following:

(a) By depositing with the department cash in the amount specified in Section 16056.

(b) By providing documentation of a liability policy covering the operation of the vehicle that (A) is issued by a charitable risk pool operating under Section 5005.1 of the Corporations Code, if the registered owner of the vehicle is a nonprofit organization that is exempt from taxation under paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code and (B) the policy is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than fifteen thousand dollars ($15,000) because of bodily injury to or death of one person in any one accident and, subject to that limit for one person, to a limit of not less than thirty thousand dollars ($30,000) because of bodily injury to or death of two

or more persons in any one accident, and, if the accident has resulted in injury to, or destruction of property, to a limit of not less than five thousand dollars ($5,000) because of injury to or destruction of property of others in any one accident.

(c) By any other manner authorized by the department which effectuates the purposes of this chapter.

SEC. 17. Section 16055 of the Vehicle Code is amended to read:

16055. Evidence of insurance or bond shall be submitted by the insurer or surety in conformance with the requirements of Section 16057. In the event of notice to the department by the company that issued one of the above stated policies or bonds that coverage was not in effect, then the policy or bond shall not operate to establish evidence as provided for by Section 16054.

SEC. 18. Section 16070 of the Vehicle Code is amended to read:

16070. (a) Whenever a driver involved in an accident described in Section 16000 fails to provide evidence of financial responsibility, as required by Section 16020, at the time of the accident, the department shall, pursuant to subdivision (b), suspend the privilege of the driver or owner to drive a motor vehicle, including the driving privilege of a nonresident in this state.

(b) Whenever the department receives an accident report pursuant to this article that alleges that any of the drivers involved in the accident was not in compliance with Section 16020 at the time of the accident, the department shall immediately mail to that driver a notice of intent to suspend the driving privilege of that driver. The department shall suspend the driving privilege 30 days after mailing the notice, unless the driver has, prior to that date, established evidence of financial responsibility at the time of the accident, as specified in Section 16021, with the department. The suspension notice shall notify the driver of the action taken and the right to a hearing under Section 16075.

SEC. 19. Section 23103 of the Vehicle Code is amended to read:

23103. (a) Any person who drives any vehicle upon a highway in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) Any person who drives any vehicle in any offstreet parking facility, as defined in subdivision (c) of Section 12500, in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(c) Persons convicted of the offense of reckless driving shall be punished by imprisonment in a county jail for not less than five days nor more than 90 days or by a fine of not less than one hundred forty-five dollars ($145) nor more than one thousand dollars ($1,000), or by both that fine and imprisonment, except as provided in Section 23104.

SEC. 20. Section 24616 is added to the Vehicle Code, to read:

24616. (a) A motor vehicle may be equipped with one or two rear-facing auxiliary lamps. For the purposes of this section, a rear-facing auxiliary lamp is a lamp that is mounted on the vehicle facing rearward. That lamp shall meet the photometric and performance requirements of the Society of Automotive Engineers Standard J1424 for cargo lamps.

(b) A rear-facing auxiliary lamp may project only a white light, with the main cone of light projecting both rearward and downward. The main cone of light shall illuminate the road surface or ground immediately rearward of a line parallel to the rear of the vehicle for a distance not greater than 50 feet. The main cone of light may not project to the front or sides of the vehicle.

(c) A rear-facing auxiliary lamp may be activated only when the vehicle is stopped. A vehicle equipped with a rear-facing auxiliary lamp shall also be equipped with a system that allows activation of the lamp only when the vehicle is in the ''park'' setting, if the vehicle is equipped with an automatic transmission, or in the ''neutral'' setting with the parking brake engaged, if the vehicle is equipped with a manual transmission.

(d) A vehicle equipped with a rear-facing auxiliary lamp may have an activation switch accessible to the operator from the rear of the vehicle.

SEC. 21. Section 25108 of the Vehicle Code is amended to read:

25108. (a) Any motor vehicle may be equipped with not more than two amber turn-signal pilot indicators mounted on the exterior. The light output from any indicator shall not exceed five candlepower unless a provision is made for operating the indicator at reduced intensity during darkness in which event the light output shall not exceed five candlepower during darkness or 15 candlepower at any other time. The center of the beam shall be projected toward the driver.

(b) Any vehicle may be equipped with pilot indicators visible from the front to monitor the functioning or condition of parts essential to the operation of the vehicle or of equipment attached to the vehicle that is necessary for protection of the cargo or load. The pilot indicators shall be steady-burning, having a projected lighted lens area of not more than three-quarters of a square inch and have a light output of not more than five candlepower. The pilot indicator may be of any color except red.

(c) Other exterior pilot indicators of any color may be used for monitoring exterior lighting devices, provided that the area of each indicator is less than 0.20 square inches, the intensity of each indicator does not exceed 0.10 candlepower, and the color red is not visible to the front.

(d) Any towed vehicle may be equipped with an exterior-mounted indicator lamp used only to indicate the functional status of an antilock braking system providing that either of the following conditions are met:

(1) The indicator lamp complies with the applicable requirements of the federal motor vehicle safety standards.

(2) The indicator lamp is designed and located so that it will be readily visible, with the assistance of a rearview mirror if necessary, to the driver of the towing motor vehicle and the indicator lamp has a light source not exceeding five candlepower. The light shall not show to the sides or rear of the vehicle and the indicator lamp may emit any color except red.

(e) (1) Notwithstanding any other provision of law, any motor vehicle may be equipped with not more than two exterior-lighted data monitors that transmit information to the driver of the vehicle regarding the efficient or safe operation, or both the efficient and safe operation, of the vehicle.

(2) Data monitors shall comply with all of the following conditions:

(A) Be mounted to the vehicle in a manner so that they are readily visible to the driver of the vehicle when the driver is seated in the normal driving position. Data monitors shall not be designed to convey information to any person other than the driver of the vehicle.

(B) Be limited in size to not more than two square inches of lighted area each.

(C) Not emit a light brighter than reasonably necessary to convey the intended information.

(D) Not project a glaring light to the driver or, to other motorists, or to any other person.

(3) Data monitors may incorporate flashing or changing elements only as necessary to convey the intended information. Data monitors shall not resemble any official traffic-control device or required lighting device or be combined with any required lighting device.

(4) Data monitors may display any color, except that the color red shall not be visible to the front of the vehicle.

SEC. 22. Notwithstanding any other provision of law, the Department of Transportation shall extend the completion to June 30, 2004, for the Environmental Enhancement and Mitigation project for the Tahoe City Public Utility District (Project No. 98-38; Agreement No. 03-98-12).

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.

SEC. 24. 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 a section that is amended, added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act.

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## CHAPTER 740

An act to add Section 7152.7 to the Health and Safety Code, and to amend Sections 1672, 12811, and 13005 of the Vehicle Code, relating to organ and tissue donation.

[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. This act shall be known and may be cited as the Organ and Tissue Donor Registry Act of 2001.

SEC. 2. (a) The Legislature finds and declares all of the following:

(1) More than 15,000 Californians are now waiting for a lifesaving organ transplant. Based on the current trend in organ donations, one in three of those waiting will die.

(2) While on a national level the number of organ donors has increased by 4 percent in the first six months of 2000 as compared to the first six months of 1999, the number of organ donors in California has decreased by 13 percent during this same time period.

(3) In all of 2000 there were only 626 cadaveric donors in California.

(4) A decrease in organ donors results in longer stays on the national organ transplant waiting list and, consequently, more death for those patients who are waiting.

(5) The national organ transplant waiting list, which is maintained by the United Network for Organ Sharing, is growing at the rate of 1,000 per month. A name is added to this national data base every 16 minutes.

(6) However, no registry exists in California for those persons who have expressed a wish to be an organ donor.

(b) It is the intent of the Legislature to increase the number of persons who identify themselves as potential organ donors. It is further the intent of the Legislature to establish a statewide organ and tissue donor registry to expedite the match between organ donors and recipients and to encourage charitable contributions to support the registry.

SEC. 3. Section 7152.7 is added to the Health and Safety Code, to read:

7152.7. (a) There is hereby established in the California Health and Human Services Agency the Organ and Tissue Donor Registry that shall contain information regarding persons who have identified themselves as organ and tissue donors upon their death. The agency or its designee shall be responsible for maintaining the registry and for developing methods to increase the number of donors who enroll in the registry.

(b) The agency or designee shall make available to the federally designated organ procurement organizations in California and the state licensed tissue and eye banks information contained in the registry regarding potential donors on a 24-hour-a-day, seven-days-a-week basis. This information shall be used to expedite a match between identified organ and tissue donors and potential recipients.

(c) The agency may receive voluntary contributions to support the registry and its activities. The contributions shall be deposited in the Organ and Tissue Donor Registry Fund which is hereby created in the State Treasury. Expenditures from the fund shall be subject to appropriation by the Legislature and shall be for the sole purpose of providing support for the registry and its activities.

(d) Implementation of this section shall be contingent on the Director of Finance making a determination that sufficient moneys have been collected in the Organ and Tissue Donor Registry Fund to support the development costs of establishing the registry and operational costs for the first year of operation.

SEC. 4. Section 1672 of the Vehicle Code is amended to read:

1672. (a) The department shall make available, in the public area of each office of the department where applications for driver's licenses or identification cards are received, space for a sign or notice briefly describing the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code) and information about the Organ and Tissue Donor Registry and the Organ and Tissue Donor Registry Fund.

(b) The department shall make available to the public in its offices a pamphlet or brochure providing more detailed information on the Organ and Tissue Donor Registry and the Organ and Tissue Donor Registry Fund.

(c) The signs, notices, pamphlets, and brochures specified in subdivisions (a) and (b) shall be provided without cost to the department by responsible private parties associated with the anatomical gift program.

SEC. 5. Section 12811 of the Vehicle Code, as amended by Section 5 of Chapter 1008 of the Statutes of 1999, is amended to read:

12811. (a) (1) When the department determines that the applicant is lawfully entitled to a license, it shall issue to the person a driver's license as applied for. The license shall state the class of license for which

the licensee has qualified and shall contain the distinguishing number assigned to the applicant, the date of expiration, the true full name, age, and mailing address of the licensee, a brief description and engraved picture or photograph of the licensee for the purpose of identification, and space for the signature of the licensee.

Each license shall also contain a space for the endorsement of a record of each suspension or revocation thereof.

The department shall use whatever process or processes, in the issuance of engraved or colored licenses, that prohibit, as near as possible, the ability to alter or reproduce the license, or prohibit the ability to superimpose a picture or photograph on the license without ready detection.

(2) In addition to the requirements of paragraph (1), a license issued to a person under 18 years of age shall display the words ''provisional until age 18.''

(b) The department shall provide a form that, when completed, may be carried with the license, by which the licensee may indicate his or her willingness and intent to make an anatomical gift, including the gift of a pacemaker, or his or her refusal to make an anatomical gift pursuant to Section 7150.5 of the Health and Safety Code, and, if applicable, the date that a pacemaker was implanted. The form shall be designed to obtain information sufficient to identify the nature of the anatomical gift and shall include, but not be limited to, all of the following:

(1) A space for the signature of the potential donor.

(2) A space for the signature of one or more witnesses, which should include the spouse, parent, or adult child of the donor or any other next of kin.

(3) A statement sufficient in its terms to meet the requirements of the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(4) A space for the donor to indicate whether the donor desires to donate tissues or organs, or both, or the donor's entire body for the purpose of transplantation or medical research, or both.

(5) Text informing the donor that the form is a legally binding document, which shall remain binding after death despite any expressed desires of next of kin opposed to the donation.

(6) Text requiring the donor to discuss the decision to donate with family, friends, or any other person who might be directly affected by the donation, particularly those next of kin who might object to the decision and a space for the donor's initials to acknowledge that it is the donor's responsibility to comply with this requirement.

(7) Text informing the donor that rescission of the decision to donate shall require the completion of a new form and the removal of the sticker

described in Section 1672.5 from the driver's license or identification card.

(c) (1) The statement required under paragraph (3) of subdivision (b) shall not be deemed to be effective unless both of the following conditions have been met:

(A) The statement is signed by the licensee.

(B) The licensee is 18 years of age or older at the time of signing.

(2) If the licensee cannot sign, the statement may be signed for the licensee, at his or her direction and in his or her presence, in the presence of two witnesses who shall sign the statement in his or her presence.

(d) The department shall present the form provided under subdivision (b), and explain its use, to each applicant for a license or license renewal.

(e) The anatomical gift shall become effective upon the death of the licensee.

(f) No public entity or employee is liable for any loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the form provided pursuant to subdivision (b).

(g) No contract may be let to any nongovernmental entity for the processing of driver's licenses, unless the department receives two or more qualified bids from independent, responsible bidders.

(h) This section shall become operative on the date determined under subdivision (a) of Section 1672.3.

(i) This section shall become inoperative on the date the Director of Finance makes the determination described in subdivision (d) of Section 7152.7 of the Health and Safety Code.

SEC. 5.5. Section 12811 of the Vehicle Code is amended to read:

12811. (a) (1) When the department determines that the applicant is lawfully entitled to a license, it shall issue to the person a driver's license as applied for. The license shall state the class of license for which the licensee has qualified and shall contain the distinguishing number assigned to the applicant, the date of expiration, the true full name, age, and mailing address of the licensee, a brief description and engraved picture or photograph of the licensee for the purpose of identification, and space for the signature of the licensee.

Each license shall also contain a space for the endorsement of a record of each suspension or revocation thereof.

The department shall use whatever process or processes, in the issuance of engraved or colored licenses, that prohibit, as near as possible, the ability to alter or reproduce the license, or prohibit the ability to superimpose a picture or photograph on the license without ready detection.

(2) In addition to the requirements of paragraph (1), a license issued to a person under 18 years of age shall display the words ''provisional until age 18.''

(b) (1) Upon issuance of a new driver's license or a renewal of a driver's license or the issuance of an identification card, the department shall provide information on organ and tissue donation, including a standardized form to be filled out by an individual who desires to enroll in the Organ and Tissue Donor Registry with instructions for mailing the completed form to the California Health and Human Services Agency, including a donor dot that may be affixed to the new driver's license or identification card.

(2) The enrollment form shall be simple in design and shall be produced by the department in cooperation with the California Health and Human Services Agency and shall require all of the following information to be supplied by an enrollee:

(A) Date of birth, sex, full name, and other information deemed necessary to provide a positive identification of an individual.

(B) Consent for organs or tissues to be donated for transplant after death.

(C) Any limitation of the donation to specific organs or tissues.

(3) The form shall also include both of the following:

(A) A description of the process for having a name removed from the registry, and the process for donating money to the Organ and Tissue Donor Registry Fund.

(B) A statement that the name of any person who enrolls in the registry pursuant to this section shall be made available to federally recognized donor organizations.

(4) The registry enrollment form shall be posted on the Web sites for the department and the agency.

(5) The form shall constitute a legal document under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code) and shall remain binding after the donor's death despite any express desires of next of kin opposed to the donation.

(6) The agency shall ensure that all additions and deletions to the registry shall occur within 30 days of receipt.

(7) Information obtained by the department for the purposes of this subdivision shall be used for these purposes only and shall not be disseminated further by the department or the California Health and Human Services Agency.

(c) A public entity or employee shall not be liable for any loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the form provided pursuant to subdivision (b).

(d) No contract may be let to any nongovernmental entity for the processing of driver's licenses, unless the department receives two or more qualified bids from independent, responsible bidders.

(e) This section shall become operative on the date the Director of Finance makes the determination described in subdivision (d) of Section 7152.7 of the Health and Safety Code.

SEC. 6. Section 13005 of the Vehicle Code, as added by Section 9 of Chapter 887 of the Statutes of 1998, is amended to read:

13005. (a) The identification card shall resemble in appearance, so far as is practicable, a driver's license issued pursuant to this code. It shall adequately describe the applicant, bear his or her picture, and be produced in color or engraved by a process or processes that prohibit as near as possible, the ability to alter or reproduce the identification card, or prohibit the ability to superimpose a picture or photograph on the identification card without ready detection.

(b) With every identification card, the department shall provide the form described in subdivisions (b) and (c) of Section 12811. The form may be carried with the identification card and may be used by the cardholder to indicate his or her willingness and intent to make an anatomical gift, his or her refusal to make an anatomical gift pursuant to Section 7150.5 of the Health and Safety Code, or the date that a pacemaker was implanted. The department shall present this form, and explain its use, to each applicant for an identification card or identification card renewal.

(c) The anatomical gift shall become effective upon the death of the holder of the card.

(d) No contract may be let to any nongovernmental entity for the processing of identification cards unless the department receives two or more qualified bids from independent, responsible bidders.

(e) This section shall become operative on the date determined under subdivision (a) of Section 1672.3.

(f) This section shall become inoperative on the date the Director of Finance makes the determination described in subdivision (d) of Section 7152.7 of the Health and Safety Code.

SEC. 6.5. Section 13005 of the Vehicle Code, as amended by Section 9 of Chapter 887 of the Statutes of 1998, is amended to read:

13005. (a) The identification card shall resemble in appearance, so far as is practicable, a driver's license issued pursuant to this code. It shall adequately describe the applicant, bear his or her picture, and be produced in color or engraved by a process or processes that prohibit as near as possible, the ability to alter or reproduce the identification card, or prohibit the ability to superimpose a picture or photograph on the identification card without ready detection.

(b) (1) Upon issuance of a new identification card, or renewal of an identification card, the department shall provide information on organ and tissue donation, including a standardized form to be filled out by an individual who desires to enroll in the Organ and Tissue Donor Registry

with instructions for mailing the completed form to the California Health and Human Services Agency.

(2) The enrollment form shall be simple in design and shall be produced by the department, in cooperation with the California Health and Human Services Agency, and shall require all of the following information to be supplied by the enrollee:

(A) Date of birth, sex, full name, address, and home telephone number.

(B) Consent for organs or tissues to be donated for transplant after death.

(C) Any limitation of the donation to specific organs or tissues.

(3) The form shall also include a description of the process for having a name removed from the registry, and the process for donating money to the Organ and Tissue Donor Registry Fund.

(4) The registry enrollment form shall be posted on the Web sites for the department and the California Health and Human Services Agency.

(5) The form shall constitute a legal document under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).

(6) The agency shall ensure that all additions and deletions to the registry shall occur within 30 days of receipt.

(7) Information obtained by the department for the purposes of this subdivision shall be used for these purposes only and shall not further be disseminated by the department or the California Health and Human Services Agency.

(c) No contract may be let to any nongovernmental entity for the processing of identification cards unless the department receives two or more qualified bids from independent, responsible bidders.

(d) This section shall become operative on the date the Director of Finance makes the determination described in subdivision (d) of Section 7152.7 of the Health and Safety Code.

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## CHAPTER 741

An act to amend Sections 33140, 33141, 33333.2, 33333.4, 33333.6, 33333.7, 33490, 33492.13, 33607.7, and 50093 of, to amend, repeal, and add Section 33413 of, and to add Sections 33333.8, 33333.10, 33333.11, 33333.13, and 50106 to, the Health and Safety Code, relating to redevelopment.

[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 33140 of the Health and Safety Code is amended to read:

33140. If an agency has not redeveloped or acquired land for, or commenced the redevelopment of, a project, or entered into contracts for redevelopment within two years after the adoption of an ordinance pursuant to Section 33101, or, in the case of an agency authorized to transact business and exercise powers by resolution adopted pursuant to the provisions of Section 33101 that were in effect prior to the adoption of that resolution, the legislative body may, by ordinance, declare that there is no further need for the agency. A legislative body shall not adopt an ordinance declaring that there is no further need for the agency if, in one or more project areas, the agency has not complied with subdivision (a) of Section 33333.8. Upon the adoption of the ordinance, the offices of the agency members are vacated and the capacity of the agency to transact business or exercise any powers is suspended until the legislative body adopts an ordinance declaring the need for the agency to function.

SEC. 2. Section 33141 of the Health and Safety Code is amended to read:

33141. Upon the motion of the legislative body or upon recommendation of the agency, the legislative body of the community may, by ordinance, order the deactivation of an agency by declaring that there is no need for an agency to function in the community, if the agency has no outstanding bonded indebtedness, no other unpaid loans, indebtedness, or advances, and no legally binding contractual obligations with persons or entities other than the community, unless the community assumes the bonded indebtedness, unpaid loans, indebtedness, and advances, and legally binding contractual obligations. A legislative body shall not adopt an ordinance declaring that there is no need for the agency, if in one or more project areas, the agency has not complied with subdivision (a) of Section 33333.8. An ordinance of a legislative body declaring there is no need for an agency to function in the community shall be subject to referendum as prescribed by law for the ordinances of the legislative body.

SEC. 3. Section 33333.2 of the Health and Safety Code is amended to read:

33333.2. (a) A redevelopment plan containing the provisions set forth in Section 33670 shall contain all of the following limitations. A redevelopment plan that does not contain the provisions set forth in Section 33670 shall contain the limitations in paragraph (4):

(1) (A) A time limit on the establishing of loans, advances, and indebtedness to be paid with the proceeds of property taxes received

pursuant to Section 33670 to finance in whole or in part the redevelopment project, which may not exceed 20 years from the adoption of the redevelopment plan, except by amendment of the redevelopment plan as authorized by subparagraph (B). This limit, however, shall not prevent agencies from incurring debt to be paid from the Low and Moderate Income Housing Fund or establishing more debt in order to fulfill the agency's housing obligations under subdivision (a) of Section 33333.8. The loans, advances, or indebtedness may be repaid over a period of time longer than this time limit as provided in this section. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond this time limitation. This limit shall not prevent agencies from refinancing, refunding, or restructuring indebtedness after the time limit if the indebtedness is not increased and the time during which the indebtedness is to be repaid is not extended beyond the time limit to repay indebtedness required by this section.

(B) The time limitation established by subparagraph (A) may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, that (i) significant blight remains within the project area; and (ii) this blight cannot be eliminated without the establishment of additional debt. However, this amended time limitation may not exceed 30 years from the effective date of the ordinance adopting the redevelopment plan, except as necessary to comply with subdivision (a) of Section 33333.8.

(2) A time limit, not to exceed 30 years from the adoption of the redevelopment plan, on the effectiveness of the redevelopment plan. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act pursuant to the redevelopment plan except to pay previously incurred indebtedness and to enforce existing covenants or contracts, unless the agency has not completed its housing obligations pursuant to subdivision (a) of Section 33333.8, in which case the agency shall retain its authority to implement requirements under subdivision (a) of Section 33333.8, including its ability to incur and pay indebtedness for this purpose, and shall use this authority to complete these housing obligations as soon as is reasonably possible.

(3) A time limit, not to exceed 45 years from the adoption of the redevelopment plan, to repay indebtedness with the proceeds of property taxes received pursuant to Section 33670. After the time limit established pursuant to this paragraph, an agency may not receive property taxes pursuant to Section 33670, except as necessary to comply with subdivision (a) of Section 33333.8.

(4) A time limit, not to exceed 12 years from the adoption of the redevelopment plan, for commencement of eminent domain proceedings to acquire property within the project area. This time

limitation may be extended only by amendment of the redevelopment plan.

(b) If a redevelopment plan is amended to add territory, the amendment shall contain the time limits required by this section.

(c) This section shall apply only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1994, and to amendments that add territory and that are adopted on or after January 1, 1994.

SEC. 4. Section 33333.4 of the Health and Safety Code is amended to read:

33333.4. (a) Every legislative body which adopted a final redevelopment plan prior to October 1, 1976, that contains the provisions set forth in Section 33670 but which does not contain all of the limitations required by Section 33333.2, shall adopt an ordinance on or before December 31, 1986, which contains all of the following:

(1) A limitation on the number of dollars of taxes which may be divided and allocated to the redevelopment agency pursuant to the plan, including any amendments to the plan. Taxes shall not be divided and shall not be allocated to the redevelopment agency beyond that limitation, except as necessary to comply with subdivision (a) of Section 33333.8.

(2) A time limit on the establishing of loans, advances, and indebtedness to finance in whole, or in part, the redevelopment project. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond the time limitation, except as necessary to comply with subdivision (a) of Section 33333.8.

(3) A time limit, not to exceed 12 years, for commencement of eminent domain proceedings to acquire property within the project area.

(b) The limitations established in the ordinance adopted pursuant to this section shall apply to the redevelopment plan as if the redevelopment plan had been amended to include those limitations. However, in adopting the ordinance, neither the legislative body nor the agency is required to comply with Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans.

(c) The limitations established in the ordinance adopted pursuant to this section shall not be applied to limit allocation of taxes to an agency to the extent required to eliminate project deficits created under subdivision (g) of Section 33334.6 in accordance with the plan adopted pursuant thereto for the purpose of eliminating the deficit or to comply with subdivision (a) of Section 33333.8. In the event of a conflict between these limitations and the obligations under Section 33334.6 or subdivision (a) of Section 33333.8, the legislative body shall amend the

ordinance adopted pursuant to this section to modify the limitations to the extent necessary to permit compliance with the plan adopted pursuant to subdivision (g) of Section 33334.6, to permit compliance with subdivision (a) of Section 33333.8, and to allow full expenditure of moneys in the agency's Low and Moderate Income Housing Fund in accordance with Section 33334.3. The procedure for amending the ordinance pursuant to this subdivision shall be the same as for adopting the ordinance under subdivision (b).

(d) This section shall not be construed to allow the impairment of any obligation or indebtedness incurred by the legislative body or the agency pursuant to this part.

(e) In any litigation to challenge or attack any ordinance adopted pursuant to this section, the court shall sustain the actions of the legislative body and the agency unless the court finds those actions were arbitrary or capricious. The Legislature finds and declares that this is necessary because redevelopment agencies with project areas established prior to October 1, 1976, have incurred existing obligations and indebtedness and have adopted projects, programs, and activities with the authority to receive and pledge the entire allocation of taxes authorized by Section 33670 and that it is necessary to protect against the possible impairment of existing obligations and indebtedness and to allow the completion of adopted projects and programs.

(f) The ordinance adopted by the legislative body in compliance with this section does not relieve any agency of its obligations under Section 33334.2, 33334.3, Article 9 (commencing with Section 33410), or any other requirement contained in this part.

(g) A redevelopment plan adopted on or after October 1, 1976, and prior to January 1, 1994, containing the provisions set forth in Section 33670, shall also contain:

(1) A limitation on the number of dollars of taxes that may be divided and allocated to the agency pursuant to the plan, including any amendments to the plan. Taxes shall not be divided and shall not be allocated to the agency beyond this limitation, except pursuant to amendment of the redevelopment plan, or as necessary to comply with subdivision (a) of Section 33333.8.

(2) A time limit, not to exceed 12 years, for commencement of eminent domain proceedings to acquire property within the project area. This time limit may be extended only pursuant to amendment of the redevelopment plan.

SEC. 5. Section 33333.6 of the Health and Safety Code is amended to read:

33333.6. The limitations of this section shall apply to every redevelopment plan adopted on or before December 31, 1993.

(a) The effectiveness of every redevelopment plan to which this section applies shall terminate at a date which shall not exceed 40 years from the adoption of the redevelopment plan or January 1, 2009, whichever is later. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act pursuant to the redevelopment plan except to pay previously incurred indebtedness, to comply with subdivision (a) of Section 33333.8 and to enforce existing covenants, contracts, or other obligations.

(b) Except as provided in subdivisions (f) and (g), a redevelopment agency shall not pay indebtedness or receive property taxes pursuant to Section 33670 after 10 years from the termination of the effectiveness of the redevelopment plan pursuant to subdivision (b).

(c) (1) If plans that had different dates of adoption were merged on or before December 31, 1993, the time limitations required by this section shall be counted individually for each merged plan from the date of the adoption of each plan. If an amendment to a redevelopment plan added territory to the project area on or before December 31, 1993, the time limitations required by this section shall commence, with respect to the redevelopment plan, from the date of the adoption of the redevelopment plan, and, with respect to the added territory, from the date of the adoption of the amendment.

(2) If plans that had different dates of adoption are merged on or after January 1, 1994, the time limitations required by this section shall be counted individually for each merged plan from the date of the adoption of each plan.

(d) (1) Unless a redevelopment plan adopted prior to January 1, 1994, contains all of the limitations required by this section and each of these limitations does not exceed the applicable time limits established by this section, the legislative body, acting by ordinance on or before December 31, 1994, shall amend every redevelopment plan adopted prior to January 1, 1994, either to amend an existing time limit that exceeds the applicable time limit established by this section or to establish time limits that do not exceed the provisions of subdivision (b) or (c).

(2) The limitations established in the ordinance adopted pursuant to this section shall apply to the redevelopment plan as if the redevelopment plan had been amended to include those limitations. However, in adopting the ordinance required by this section, neither the legislative body nor the agency is required to comply with Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans.

(e) (1) If a redevelopment plan adopted prior to January 1, 1994, contains one or more limitations required by this section, and the limitation does not exceed the applicable time limit required by this

section, this section shall not be construed to require an amendment of this limitation.

(2) A redevelopment plan adopted prior to January 1, 1994, that has a limitation shorter than the terms provided in this section may be amended by a legislative body by adoption of an ordinance on or after January 1, 1999, but on or before December 31, 1999, to extend the limitation, provided that the plan as so amended does not exceed the terms provided in this section. In adopting this ordinance, neither the legislative body nor the agency is required to comply with Section 33354.6 or Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans. On or after January 1, 2002, a redevelopment plan may be amended by a legislative body by adoption of an ordinance to eliminate the time limit on the establishment of loans, advances, and indebtedness required by this section prior to January 1, 2002. In adopting this ordinance, neither the legislative body nor the agency is required to comply with Section 33354.6 or Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans, except that the agency shall make the payment to affected taxing entities required by Section 33607.7.

(f) The limitations established in the ordinance adopted pursuant to this section or Section 33333.10 shall not be applied to limit allocation of taxes to an agency to the extent required to comply with subdivision (a) of Section 33333.8. In the event of a conflict between these limitations and the obligations under subdivision (a) of Section 33333.8, the legislative body shall amend the ordinance adopted pursuant to this section to modify the limitations to the extent necessary to permit compliance with subdivision (a) of Section 33333.8 and to allow full expenditure of moneys in the agency's Low and Moderate Income Housing Fund in accordance with subdivision (a) of Section 33333.8. The procedure for amending the ordinance pursuant to this subdivision shall be the same as for adopting the ordinance under subdivision (d).

(g) This section shall not be construed to affect the validity of any bond, indebtedness, or other obligation, including any mitigation agreement entered into pursuant to Section 33401, authorized by the legislative body, or the agency pursuant to this part, prior to January 1, 1994. This section shall not be construed to affect the right of an agency to receive property taxes, pursuant to Section 33670, to pay the bond, indebtedness, or other obligation.

(h) A redevelopment agency shall not pay indebtedness or receive property taxes pursuant to Section 33670, with respect to a redevelopment plan adopted prior to January 1, 1994, after the date identified in subdivision (b) or the date identified in the redevelopment

plan, whichever is earlier, except as provided in paragraph (2) of subdivision (e), in subdivision (g), or in Section 33333.8.

(i) The Legislature finds and declares that the amendments made to this section by the act that adds this subdivision are intended to add limitations to the law on and after January 1, 1994, and are not intended to change or express legislative intent with respect to the law prior to that date. It is not the intent of the Legislature to affect the merits of any litigation regarding the ability of a redevelopment agency to sell bonds for a term that exceeds the limit of a redevelopment plan pursuant to law that existed prior to January 1, 1994.

(j) If a redevelopment plan is amended to add territory, the amendment shall contain the time limits required by Section 33333.2.

SEC. 6. Section 33333.7 of the Health and Safety Code is amended to read:

33333.7. (a) Notwithstanding the time limits in paragraph (1) of subdivision (a) of Section 33333.6, as that paragraph (1) read on December 31, 2001, the Redevelopment Agency of the City and County of San Francisco may, subject to the approval of the Board of Supervisors of the City and County of San Francisco, retain its ability to incur indebtedness exclusively for Low and Moderate Income Housing Fund activities eligible under Sections 33334.2 and 33334.3 until January 1, 2014, or until the agency replaces all of the housing units demolished prior to the enactment of the replacement housing obligations in Chapter 970 of the Statutes of 1975, whichever occurs earlier. The ability of the agency to receive tax increment revenues to repay indebtedness incurred for these Low and Moderate Income Housing Fund activities may be extended until no later than January 1, 2044. Nothing in this paragraph shall be construed to extend a plan's effectiveness, except to incur additional indebtedness for Low and Moderate Income Housing Fund activities, to pay previously incurred indebtedness, and to enforce existing covenants, contracts, or other obligations.

(b) Annual revenues shall not exceed the amount necessary to fund the Low and Moderate Income Housing Fund activities of the agency. The agency shall neither collect nor spend more than 10 percent for the planning and administrative costs authorized pursuant to subdivision (e) of Section 33334.3. Revenues received under this paragraph shall not exceed the amount of tax increment received and allocated to the agency pursuant to the plan, as it has been amended, less the amount necessary to pay prior outstanding indebtedness, and less the amount of the project area's property tax revenue that school entities are entitled to receive pursuant to Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code if the plan had not been amended. Additionally,

revenues collected under this paragraph are subject to the payments to affected taxing entities pursuant to Section 33607.

(c) The activities conducted with revenues received under this paragraph shall be consistent with the policies and objectives of the community's housing element, as reviewed and approved by the department, and shall address the unmet housing needs of very low, low- and moderate-income households. The activities shall also be consistent with the community's most recently approved consolidated and annual action plans submitted to the United States Department of Housing and Urban Development, and if the director deems it necessary, the annual action plans shall be submitted to the department on an annual basis. No less than 50 percent of the revenues received shall be devoted to assisting in the development of housing that is affordable to very low income households.

(d) The agency shall not incur any indebtedness pursuant to this paragraph until the director certifies, after consulting with the agency, the net difference between the number of housing units affordable to persons and families of low and moderate income that the agency destroyed or removed prior to January 1, 1976, and the number of housing units affordable to persons and families of low and moderate income that the agency rehabilitated, developed, or constructed, or caused to be rehabilitated, developed, or constructed within the project areas adopted prior to January 1, 1976.

(e) The agency shall not incur any indebtedness pursuant to this paragraph unless the director of the department certifies annually, prior to the creation of indebtedness, all of the following:

(1) The community has a current housing element that substantially complies with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(2) The community's housing element indicates an unmet need for Low and Moderate Income Housing Fund activities.

(3) The agency's most recent independent financial audit report prepared pursuant to Section 33080.1 reports acceptable findings and no major violations of this part.

(4) The agency has complied with subdivision (a) of Section 33334.2.

(5) The agency has met the requirements of this part with respect to the provision of dwelling units for persons and families of low or moderate income, including, but not limited to, the requirements of Section 33413.

SEC. 7. Section 33333.8 is added to the Health and Safety Code, to read:

33333.8. (a) Every redevelopment agency shall comply with and fulfill its obligations with regard to the provision of affordable housing

as required by this part prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2 and 33333.6. A legislative body shall not adopt an ordinance terminating a redevelopment project area if the agency has not complied with subdivision (a) of Section 33413 with respect to replacement housing, subdivision (b) of Section 33413 with respect to agency developed housing and project area housing, and Section 33333.12 with respect to excess surplus funds.

(b) If, on the date of the time limit on the effectiveness of the redevelopment plan, a redevelopment agency has not complied with subdivision (a), the time limit on the effectiveness of the redevelopment plan shall be suspended and the agency shall use all tax increment funds that are not pledged to repay indebtedness to comply with subdivision (a). If, on the date of the time limit on the repayment of indebtedness, the agency has not complied with subdivision (a), the time limit on the repayment of indebtedness shall be suspended and the agency shall receive and use tax increment funds to comply with subdivision (a).

(c) If, on the date of the time limit on the repayment of indebtedness, the agency has complied with its obligations under subdivision (a) and has moneys remaining in the Low and Moderate Income Housing Fund, the agency shall transfer the remaining moneys to a low and moderate income housing fund for a different project area within the agency's jurisdiction, if one exists, or if a different project area does not exist, the agency shall either transfer the remaining moneys to a special fund of the community or to the community or county housing authority. The community or county housing authority to which the remaining moneys are transferred shall utilize the moneys for the purposes of, and subject to the same restrictions that are applicable to, the redevelopment agency under this part.

(d) If a redevelopment plan provides a limit on the total amount of tax increment funds that may be received by a redevelopment agency for any project area, and if that limit is reached prior to the agency complying with its obligations pursuant to subdivision (a), that limit is suspended and the agency shall receive and use tax increment funds until the agency has fully complied with its obligations.

(e) If an agency fails to comply with its obligations pursuant to this section, any person may seek judicial relief. The court shall require the agency to take all steps necessary to comply with those obligations, including as necessary the adoption of ordinances, to incur debt, to obtain tax increments, to expend tax increments, and to enter into contracts as necessary to meet its housing obligations under this part.

SEC. 8. Section 33333.10 is added to the Health and Safety Code, to read:

33333.10. (a) (1) Notwithstanding the time limits in subdivisions (a) and (b) of Section 33333.6, an agency that adopted a redevelopment plan on or before December 31, 1993, may, pursuant to this section, amend that plan to extend the time limit on effectiveness of the plan for up to 10 additional years beyond the limit allowed by subdivision (a) of Section 33333.6.

(2) In addition, the agency may, pursuant to this section, amend that plan to extend the time limit on the payment of indebtedness and receipt of property taxes to be not more than 10 years from the termination of the effectiveness of the redevelopment plan as that time limit has been amended pursuant to paragraph (1).

(b) A redevelopment plan may be amended pursuant to subdivision (a) only after the agency finds, based on substantial evidence, that both of the following conditions exist:

(1) Significant blight remains within the project area.

(2) This blight cannot be eliminated without extending the effectiveness of the plan and the receipt of property taxes.

(c) As used in this section:

(1) ''Blight'' has the same meaning as that term is given in Section 33030.

(2) ''Significant'' means important and of a magnitude to warrant agency assistance.

(3) ''Necessary and essential parcels'' means parcels that are not blighted but are so necessary and essential to the elimination of the blight that these parcels should be included within the portion of the project area in which tax increment funds may be spent. ''Necessary and essential parcels'' are (A) parcels that are adjacent to one or more blighted parcels that are to be assembled in order to create a parcel of adequate size given present standards and market conditions, and (B) parcels that are adjacent or near parcels that are blighted on which it is necessary to construct a public improvement to eliminate the blight.

(d) For purposes of this section, significant blight can exist in a project area even though blight is not prevalent in a project area. The report submitted to the legislative body pursuant to Section 33352 shall identify on a map the portion of the project area in which significant blight remains.

(e) After the limit on the payment of indebtedness and receipt of property taxes that would have taken effect but for the amendment pursuant to this section, except for funds deposited in the Low and Moderate Income Housing Fund pursuant to Sections 33334.2 or 33334.6, the agency shall spend tax increment funds only within the portion of the project area that has been identified in the report adopted pursuant to Section 33352 as the area containing blighted parcels and necessary and essential parcels. Except as otherwise limited by

subdivisions (f) and (g), agencies may continue to spend funds deposited in the Low and Moderate Income Housing Fund in accordance with this division.

(f) (1) Except as otherwise provided in this subdivision, after the limit on the payment of indebtedness and receipt of property taxes that would have taken effect, but for the amendment pursuant to this section, agencies shall only spend moneys from the Low and Moderate Income Housing Fund for the purpose of increasing, improving, and preserving the community's supply of housing at affordable housing cost to persons and families of low or very low income, as defined in Sections 50093, 50105, and 50106. During this period, an agency that has adopted an amendment pursuant to subdivision (a) may use moneys from the Low and Moderate Income Housing Fund for the purpose of increasing, improving, and preserving housing at affordable housing cost to persons and families of moderate income as defined in Section 50093. However, this amount shall not exceed, in a five-year period, the amount of moneys from the Low and Moderate Income Housing Fund that are used to increase, improve, and preserve housing at affordable housing cost to persons and families of extremely low income, as defined in Section 50106. In no case shall the amount expended for housing for persons and families of moderate income exceed 15 percent of the annual amount deposited in the Low and Moderate Income Housing Fund during a five-year period and the number of housing units affordable to moderate-income persons shall not exceed the number of housing units affordable to extremely low income persons.

(2) Commencing with the first fiscal year that commences after the date of the adoption of an amendment pursuant to subdivision (a) and until the limit on the payment of indebtedness and receipt of property taxes that would have taken effect but for the amendment pursuant to this section, an agency that has adopted an amendment pursuant to subdivision (a) may use moneys from the Low and Moderate Income Housing Fund for the purpose of increasing, improving, and preserving housing at affordable housing cost to persons and families of moderate income as defined in Section 50093. However, this amount shall not exceed, in a five-year period, 15 percent of the amount of moneys deposited in the Low and Moderate Income Housing Fund during that five-year period and shall only be used to assist housing projects in which no less than 49 percent of the units are affordable to and occupied by persons and families of low or very low income. An agency may spend an additional amount of moneys in the same or other projects to assist housing units affordable to and occupied by moderate income persons. However, this amount shall not exceed the lesser of: the amount of moneys spent to increase, improve, and preserve housing, the amount of affordable housing costs to persons and families of extremely low

income as defined in Section 50106, or 5 percent of the moneys deposited in the Low and Moderate Income Housing Fund during that five-year period.

(g) (1) Except as provided in paragraph (2) or (3), commencing with the first fiscal year that commences after the date of adoption of an amendment pursuant to subdivision (a), not less than 30 percent of all taxes that are allocated to the agency pursuant to Section 33670 from the project so amended shall be deposited into that project's Low and Moderate Income Housing Fund for the purposes specified in subdivision (f).

(2) In any fiscal year, the agency may deposit less than the amount required by paragraph (1), but not less than the amount required by Section 33334.2 or 33334.6, into the Low and Moderate Income Housing Fund if the agency finds that the difference between the amount deposited and the amount required by paragraph (1) is necessary to make payments under existing obligations of amounts due or required to be committed, set aside, or reserved by the agency during that fiscal year and that are used by the agency for that purpose. For the purposes of this subdivision, ''existing obligations'' means the principal of, and interest on, bonds, loans, moneys advanced to, or indebtedness (whether funded, refunded, assumed, or otherwise) incurred by the agency to finance or refinance, in whole or in part, the redevelopment project so amended, existing on and created prior to the date of adoption of the amendment pursuant to subdivision (a). Obligations incurred on or after the date of adoption of the amendment pursuant to subdivision (a) shall be deemed existing obligations for the purposes of this subdivision if the net proceeds are used to refinance existing obligations as defined in this paragraph.

(3) Notwithstanding paragraph (1), an agency that sells bonds on or after the date of adoption of an amendment pursuant to subdivision (a), the repayment of which is to be made from taxes allocated to the agency pursuant to Section 33670 from the project so amended, may elect to subordinate up to 16 $^{2}/_{3}$ percent of its annual Low and Moderate Income Housing Fund deposit obligation to the payment of debt service. If the agency makes that election and in any year the agency has insufficient tax-increment revenue available to pay debt service on the bonds to which the funds from the Low and Moderate Income Housing Fund are subordinated, the agency may deposit less than the full 100 percent of its annual Low and Moderate Income Housing Fund obligation but only to the extent necessary to pay that debt service and in no event shall less than 83 $^{1}/_{3}$ percent of that obligation be deposited into the Low and Moderate Income Housing Fund for that year. The difference between the amount that is actually deposited in the Low and Moderate Income Housing Fund and the full 100 percent of the agency's Low and

Moderate Income Housing Fund deposit obligation shall constitute a deficit in the Low and Moderate Income Housing Fund subject to repayment pursuant to paragraph (4).

(4) If, pursuant to paragraph (2) or (3), the agency deposits less than 30 percent of the taxes allocated to the agency pursuant to Section 33670 in any fiscal year in the Low and Moderate Income Housing Fund, the amount equal to the difference between 30 percent of the taxes allocated to the agency pursuant to Section 33670 for each affected project and the amount actually deposited in the Low and Moderate Income Housing Fund for that fiscal year shall be established as a deficit in the Low and Moderate Income Housing Fund. The agency shall adopt a plan to eliminate the deficit in the Low and Moderate Income Housing Fund in subsequent years as determined by the agency. The obligations imposed by this section are hereby declared to be an indebtedness of the redevelopment project to which they relate, payable from taxes allocated to the agency pursuant to Section 33670 and, notwithstanding any other provision of law, shall constitute an indebtedness of the agency with respect to the redevelopment project, and the agency shall continue to receive allocations of taxes pursuant to Section 33670 until the deficit is paid in full.

(h) An agency shall not amend its redevelopment plan pursuant to this section unless the agency first adopts a resolution that finds, based on substantial evidence, all of the following:

(1) The community has adopted a 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, or if applicable, an eligible city or county within the jurisdiction of the San Diego Association of Governments has adopted a self-certification of compliance with its adopted housing element pursuant to Section 65585.1 of the Government Code.

(2) During the three fiscal years prior to the year in which the amendment is adopted, the agency has not been included in the report sent by the Controller to the Attorney General pursuant to subdivision (b) of Section 33080.8 as an agency that has a ''major violation'' pursuant to Section 33080.8.

(3) After a written request by the agency and provision of the information requested by the department, the department has issued a letter to the agency, confirming that the agency has not accumulated an excess surplus in its Low and Moderate Income Housing Fund. As used in this section, ''excess surplus'' has the same meaning as that term is defined in Section 33334.12. The department shall develop a methodology to collect information required by this section.

Information requested by the department shall include a certification by the agency's independent auditor on the status of excess surplus and submittal of data for the department to verify the status of excess surplus. The independent auditor shall make the required certification based on the Controller's office guidelines which shall include the methodology prescribed by the department pursuant to subparagraph (D) of paragraph (3) of subdivision (g) of Section 33334.12. If the department does not respond to the written request of the agency for this determination within 90 days after receipt of the written request, compliance with this requirement shall be deemed confirmed.

(i) Each redevelopment plan that has been adopted prior to January 1, 1976, that is amended pursuant to subdivision (a) shall also be amended at the same time to make subdivision (b) of Section 33413 applicable to the redevelopment plan in accordance with paragraph (1) of subdivision (d) of Section 33413.

(j) The amendment to the redevelopment plan authorized pursuant to this section shall be made by ordinance pursuant to Article 12 (commencing with Section 33450). The ordinance shall be subject to referendum as prescribed by law for ordinances of the legislative body.

(k) This section shall not apply to a project area that retains its eligibility to incur indebtedness and receive tax increment revenues pursuant to Section 33333.7.

SEC. 9. Section 33333.11 is added to the Health and Safety Code, to read:

33333.11. (a) In order to adopt an amendment pursuant to Section 33333.10, the redevelopment agency shall also comply with the procedures in this section.

(b) Before adopting an amendment of the plan, the agency shall hold a public hearing on the proposed amendment. The notice of the public hearing shall comply with Section 33452.

(c) Prior to the publication of the notice of the public hearing on the proposed amendment, the agency shall consult with each affected taxing agency with respect to the proposed amendment. At a minimum, the agency shall give each affected taxing agency the opportunity to meet with representatives of the agency for the purpose of discussing the effect of the proposed amendment upon the affected taxing agency and shall notify each affected taxing agency that any written comments from the affected taxing agency will be included in the report to the legislative body.

(d) Prior to the publication of the notice of the public hearing on the proposed amendment, the agency shall consult with and obtain the advice of members of a project area committee, if a project area committee exists, and residents and community organizations and provide to those persons and organizations, including the project area

committee, if any, the amendment prior to the agency's submitting the amendment to the legislative body. In addition, the preliminary report prepared pursuant to subdivision (e) shall be made available at no cost to the project area committee, if one exists, and residents and community organizations not later than 120 days prior to holding a public hearing on the proposed amendment.

(e) No later than 120 days prior to holding a public hearing on the proposed amendment, the agency shall send to each affected taxing entity, as defined in Section 33353.2, the Department of Finance, and the Department of Housing and Community Development, a preliminary report that contains all of the following:

(1) A map of the project area that identifies the portion, if any, of the project area that is no longer blighted and the portion of the project area that is blighted and the portion of the project area that contains necessary and essential parcels for the elimination of the remaining blight.

(2) A description of the remaining blight.

(3) A description of the projects or programs proposed to eliminate the remaining blight.

(4) A description of how the project or programs will improve the conditions of blight.

(5) The reasons why the projects or programs cannot be completed without extending the time limits on the effectiveness of the plan and receipt of tax increment revenues.

(6) The proposed method of financing these programs or projects. This description shall include the amount of tax increment revenues that is projected to be generated during the period of the extension, including amounts projected to be deposited into the Low and Moderate Income Housing Fund and amounts to be paid to affected taxing entities. This description shall also include sources and amounts of moneys other than tax increment revenues that are available to finance these projects or programs. This description shall also include the reasons that the remaining blight cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without the use of the tax increment revenues available to the agency because of the proposed amendment.

(7) An amendment to the agency's implementation plan that includes, but is not limited to, the agency's housing responsibilities pursuant to Section 33490. However, the agency shall not be required to hold a separate public hearing on the implementation plan pursuant to subdivision (d) of Section 33490 in addition to the public hearing on the amendment to the redevelopment plan.

(8) A neighborhood impact report if required by subdivision (m) of Section 33352.

(f) No later than 120 days prior to holding a public hearing on the proposed amendment, the agency shall send the proposed amendment to the planning commission. If the planning commission does not report upon the amendment within 30 days after its submission by the agency, the planning commission shall be deemed to have waived its report and recommendations concerning the amendment.

(g) No later than 45 days prior to the public hearing on the proposed amendment by the agency or the joint public hearing of the agency and the legislative body, the agency shall notify each affected taxing entity, the Department of Finance, the Department of Housing and Community Development, and each individual and organization that submitted comments on the preliminary report by certified mail of the public hearing, the date of the public hearing, and the proposed amendment. This notice shall be accompanied by the report required to be prepared pursuant to subdivision (h).

(h) No later than 45 days prior to the public hearing on the proposed amendment by the agency or the joint public hearing by the agency and the legislative body, the agency shall adopt a report to the legislative body containing all of the following:

(1) All of the information required to be contained in the preliminary report prepared pursuant to subdivision (e).

(2) The report and recommendation of the planning commission.

(3) The report required by Section 21151 of the Public Resources Code.

(4) A summary of the consultations with the affected taxing entities. If any of the affected taxing entities, a project area committee, if any, residents, or community organizations have expressed written objections or concerns with the proposed amendment as part of these consultations, the agency shall include a response to these concerns.

(5) A summary of the consultation with residents and community organizations, including the project area committee, if any.

(i) After receiving the recommendation of the agency on the proposed amendment, and not sooner than 30 days after the submission of changes to the planning commission, the legislative body shall hold a public hearing on the proposed amendment. The notice of the public hearing shall comply with Section 33452.

(j) As an alternative to the separate public hearing required by subdivision (i), the agency and the legislative body, with the consent of both, may hold a joint public hearing on the proposed amendment. Notice of this public hearing shall comply with Section 33452. When a joint public hearing is held and the legislative body is also the agency, the legislative body may adopt the amended plan with no actions required of the agency. If, after the public hearing, the legislative body determines that the amendment to the plan is necessary or desirable, the

legislative body shall adopt an ordinance amending the ordinance adopting the plan thus amended. The ordinance adopting the amendment shall contain findings that both (1) significant blight remains within the project area, and (2) the blight cannot be eliminated without the extension of the effectiveness of the plan and receipt of tax increment.

(k) If an affected taxing entity, the Department of Finance, or the Department of Housing and Community Development believes that significant remaining blight does not exist within the portion of the project area designated as blighted in the report to the legislative body regarding a proposed amendment to be adopted pursuant to Section 33333.10, the affected taxing entity, the Department of Finance, or the Department of Housing and Community Development may request the Attorney General to participate in the amendment process. The affected taxing entity, the Department of Finance, or the Department of Housing and Community Development shall request this participation within 21 days after receipt of the notice of the public hearing sent pursuant to subdivision (g). The Attorney General shall determine whether or not to participate in the amendment process. The Attorney General may consult with and request the assistance of departments of the state and any other persons or groups that are interested or that have expertise in redevelopment. The Attorney General may participate in the amendment process by requesting additional information from the agency, conducting his or her own review of the project area, meeting with the agency and any affected taxing entity, submitting evidence for consideration at the public hearing, or presenting oral evidence at the public hearing. No later than five days prior to the public hearing on the proposed amendment, the Attorney General shall notify each affected taxing agency, each department that has requested the Attorney General to review the proposed amendment, and the redevelopment agency with regard to whether the Attorney General will participate in the amendment process and, if so, how he or she will participate, on their behalf.

(*l*) The Attorney General may bring a civil action pursuant to Section 33501 to determine the validity of an amendment adopted pursuant to Section 33333.10. The Department of Finance and the Department of Housing and Community Development shall be considered interested persons for the purposes of protecting the interests of the state pursuant to Section 863 of the Code of Civil Procedure in any action brought with regard to the validity of an ordinance adopting a proposed amendment pursuant to Section 33333.10. Either department may request the Attorney General to bring an action pursuant to Section 33501 to determine the validity of an amendment adopted pursuant to Section 33333.10. Actions brought pursuant to this subdivision are in addition

to any other actions that may be brought by the Attorney General or other persons.

SEC. 10. Section 33333.13 is added to the Health and Safety Code, to read:

33333.13. Notwithstanding any other provision of this division, after the limit on the payment of indebtedness and receipt of property taxes that would have taken effect but for the amendment pursuant to Section 33333.10, notwithstanding Section 33670, the Redevelopment Agency of the City of Oakland shall not receive the amount of the project area's property tax revenue that the East Bay Regional Park District would be entitled to receive pursuant to Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code if the plan had not been amended.

SEC. 11. Section 33413 of the Health and Safety Code, as amended by Section 3 of Chapter 756 of the Statutes of 2000, is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing cost within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units.

(b) (1) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10, at least 30 percent of all new or rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10,

at least 15 percent of all new or rehabilitated dwelling units developed within the project area by public or private entities or persons other than the agency shall be available at affordable housing cost to persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a) and in the aggregate to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2) and (3) of subdivision (a) of Section 33490.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, or constructed pursuant to subdivision (a) or (b) remain available at affordable housing cost to persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, as determined by the agency, but for not less than the period of the land use controls established in the redevelopment plan, except to the extent a longer period of time may be required by other provisions of law. If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in the previous sentence. These requirements shall be made enforceable in the same manner as provided in subdivision (e) of Section 33334.3.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas that are added to a project area by amendment to a final redevelopment plan

adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976. In addition, subdivision (b) shall apply to redevelopment plans adopted prior to January 1, 1976, for which an amendment is adopted pursuant to Section 33333.10, except that subdivision (b) shall apply to those redevelopment plans prospectively only so that the requirements of subdivision (b) shall apply only to new and substantially rehabilitated dwelling units for which the building permits are issued on or after the date that the ordinance adopting the amendment pursuant to Section 33333.10 becomes effective.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equal or exceed the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to the same income level of households as the destroyed or removed units.

(g) ''Longest feasible time,'' as used in this section, includes, but is not limited to, unlimited duration.

(h) Any dwelling units constructed, rehabilitated, or acquired prior to January 1, 1997, pursuant to provisions that were in effect at the time of the construction, rehabilitation, or acquisition may continue to be counted to meet the requirements of this section.

(i) This section shall become operative on January 1, 2002.

SEC. 11.5. Section 33413 of the Health and Safety Code, as amended by Section 3 of Chapter 756 of the Statutes of 2000, is amended to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost in the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed on or after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to persons in the same or a lower income category (low, very low, or moderate), as the persons displaced from those destroyed or removed units.

(b) (1) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10 at least 30 percent of all new and substantially rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to persons and families of low or moderate income and shall be occupied by these persons and families. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Section 33333.2, 33333.6, and 33333.10 at least 15 percent of all new and substantially rehabilitated dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to persons and families of low or moderate income and shall be occupied by these persons and families. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to persons and families of low or moderate income shall be available at affordable

housing cost to very low income households and shall be occupied by these persons and families.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing costs, to persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have been required to be available inside a project area.

(iii) On or after January 1, 2002, as used in this paragraph and in paragraph (*l*), ''substantially rehabilitated dwelling units'' means substantially rehabilitated, with agency assistance, multifamily rented dwelling units with three or more units, or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units. Prior to January 1, 2002, ''substantially rehabilitated dwelling units'' shall mean substantially rehabilitated multifamily rented dwelling units with three or more units or substantially rehabilitated, with agency assistance, single-family dwelling units with one or two units.

(iv) As used in this paragraph and in paragraph (1), ''substantial rehabilitation'' means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

(v) To satisfy this paragraph, the agency may aggregate new or substantially rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase, or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of, long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable 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.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons and families of low or very low income, for the longest feasible time but not less than 55 years for rental units and 45 years for owner-occupied

units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply, in the aggregate, to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units, unless an agency determines otherwise.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2) and (3) of subdivision (a) of Section 33490.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price-restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to persons and families of low-income, moderate-income, and very low income households, respectively, and remain occupied by those persons and families for the longest feasible time, but for not less than 55 years for rental units and 45 years for homeownership units, except for the following:

(1) The agency may permit sales of owner-occupied units prior to the expiration of the 45-year period established by the agency for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess

proceeds of the sale shall be allocated to the agency, and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale of units pursuant to this subparagraph, expend funds to make affordable an equal number of units at the same income level as units sold pursuant to this subparagraph.

(2) The requirements of this subdivision shall be made enforceable in the same manner as provided in paragraph (2) of subdivision (f) of Section 33334.3.

(3) If land on which those dwelling units are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas that are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976. In addition, subdivision (b) shall apply to redevelopment plans adopted prior to January 1, 1976, for which an amendment is adopted pursuant to Section 33333.10, except that subdivision (b) shall apply to those redevelopment plans prospectively only so that the requirements of subdivision (b) shall apply only to new and substantially rehabilitated dwelling units for which the building permits are issued on or after the date that the ordinance adopting the amendment pursuant to Section 33333.10 becomes effective.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of

replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) ''Longest feasible time,'' as used in this section, includes, but is not limited to, unlimited duration.

(h) This section shall remain in effect only until January 1, 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. 11.6. Section 33413 is added to the Health and Safety Code, to read:

33413. (a) Whenever dwelling units housing persons and families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project that is subject to a written agreement with the agency or where financial assistance has been provided by the agency, the agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low or moderate income, an equal number of replacement dwelling units that have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing cost within the territorial jurisdiction of the agency. When dwelling units are destroyed or removed after September 1, 1989, 75 percent of the replacement dwelling units shall replace dwelling units available at affordable housing cost to, and occupied by, persons in the same income level of very low income households, lower income households, and persons and families of low and moderate income, as the persons displaced from those destroyed or removed units. When dwelling units are destroyed or removed after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to, and occupied by, persons in the same or a lower income category (low, very low, or moderate) as the persons displaced from those destroyed or removed units.

(b) (1) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10, at least 30 percent of all new or rehabilitated dwelling units developed by an agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 50 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and

families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(2) (A) (i) Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10, at least 15 percent of all new or rehabilitated dwelling units developed within the project area by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income. Not less than 40 percent of the dwelling units required to be available at affordable housing cost to, and occupied by, persons and families of low or moderate income shall be available at affordable housing cost to, and occupied by, very low income households.

(ii) To satisfy this paragraph, in whole or in part, the agency may cause, by regulation or agreement, to be available, at affordable housing cost to, and occupied by, persons and families of low or moderate income or to very low income households, as applicable, two units outside a project area for each unit that otherwise would have had to be available inside a project area.

(iii) To satisfy the provisions of this paragraph, the agency may aggregate new or rehabilitated dwelling units in one or more project areas, if the agency finds, based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation.

(B) To satisfy the requirements of paragraph (1) and subparagraph (A), the agency may purchase or otherwise acquire or cause by regulation or agreement the purchase or other acquisition of long-term affordability covenants on multifamily units that restrict the cost of renting or purchasing those units that either: (i) are not presently available at affordable housing cost to persons and families of low or very low income households, as applicable; or (ii) are units that are presently available at affordable 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.

(C) To satisfy the requirements of paragraph (1) and subparagraph (A), the long-term affordability covenants purchased or otherwise acquired pursuant to subparagraph (B) shall be required to be maintained on dwelling units at affordable housing cost to, and occupied by, persons and families of low or very low income, for the longest feasible time but not less than 55 years for rental units and 45 years for owner-occupied units. Not more than 50 percent of the units made available pursuant to paragraph (1) and subparagraph (A) may be assisted through the purchase of acquisition of long-term affordability covenants pursuant to subparagraph (B). Not less than 50 percent of the units made available

through the purchase or acquisition of long-term affordability covenants pursuant to subparagraph (B) shall be available at affordable housing cost to, and occupied by, very low income households.

(3) The requirements of this subdivision shall apply independently of the requirements of subdivision (a). The requirements of this subdivision shall apply in the aggregate to housing made available pursuant to paragraphs (1) and (2), respectively, and not to each individual case of rehabilitation, development, or construction of dwelling units.

(4) Each redevelopment agency, as part of the implementation plan required by Section 33490, shall adopt a plan to comply with the requirements of this subdivision for each project area. The plan shall be consistent with, and may be included within, the community's housing element. The plan shall be reviewed and, if necessary, amended at least every five years in conjunction with either the housing element cycle or the plan implementation cycle. The plan shall ensure that the requirements of this subdivision are met every 10 years. If the requirements of this subdivision are not met by the end of each 10-year period, the agency shall meet these goals on an annual basis until the requirements for the 10-year period are met. If the agency has exceeded the requirements within the 10-year period, the agency may count the units that exceed the requirement in order to meet the requirements during the next 10-year period. The plan shall contain the contents required by paragraphs (2) and (3) of subdivision (a) of Section 33490.

(c) The agency shall require that the aggregate number of replacement dwelling units and other dwelling units rehabilitated, developed, constructed, or price-restricted pursuant to subdivision (a) or (b) remain available at affordable housing cost to, and occupied by, persons and families of low-income, moderate-income, and very low income households, respectively, for the longest feasible time, but for not less than 55 years for rental units and 45 years for home ownership units, except for the following:

(1) The agency may permit sales of owner-occupied units prior to the expiration of the 45-year period for a price in excess of that otherwise permitted under this subdivision pursuant to an adopted program that protects the agency's investment of moneys from the Low and Moderate Income Housing Fund, including, but not limited to, an equity sharing program that establishes a schedule of equity sharing that permits retention by the seller of a portion of those excess proceeds, based on the length of occupancy. The remainder of the excess proceeds of the sale shall be allocated to the agency and deposited into the Low and Moderate Income Housing Fund. The agency shall, within three years from the date of sale of units under this paragraph, expend funds to make affordable an equal number of units at the same income level as units

sold under this paragraph. Only the units originally assisted by the agency shall be counted towards the agency's obligations under Section 33413.

(2) The requirements of this subdivision shall be made enforceable in the same manner as provided in paragraph (2) of subdivision (f) of Section 33334.3.

If land on which dwelling units required by this section are located is deleted from the project area, the agency shall continue to require that those units remain affordable as specified in this subdivision.

(d) (1) This section applies only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1976, and to areas which are added to a project area by amendment to a final redevelopment plan adopted on or after January 1, 1976. In addition, subdivision (a) shall apply to any other redevelopment project with respect to dwelling units destroyed or removed from the low- and moderate-income housing market on or after January 1, 1996, irrespective of the date of adoption of a final redevelopment plan or an amendment to a final redevelopment plan adding areas to a project area. Additionally, any agency may, by resolution, elect to make all or part of the requirements of this section applicable to any redevelopment project of the agency for which the final redevelopment plan was adopted prior to January 1, 1976. In addition, subdivision (b) shall apply to redevelopment plans adopted prior to January 1, 1976, for which an amendment is adopted pursuant to Section 33333.10, except that subdivision (b) shall apply to those redevelopment plans prospectively only so that the requirements of subdivision (b) shall apply only to new and substantially rehabilitated dwelling units for which the building permits are issued on or after the date that the ordinance adopting the amendment pursuant to Section 33333.10 becomes effective.

(2) An agency may, by resolution, elect to require that whenever dwelling units housing persons or families of low or moderate income are destroyed or removed from the low- and moderate-income housing market as part of a redevelopment project, the agency shall replace each dwelling unit with up to three replacement dwelling units pursuant to subdivision (a).

(e) Except as otherwise authorized by law, this section does not authorize an agency to operate a rental housing development beyond the period reasonably necessary to sell or lease the housing development.

(f) Notwithstanding subdivision (a), the agency may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

(1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.

(2) The replacement units are affordable to and occupied by the same income level of households as the destroyed or removed units.

(g) ''Longest feasible time,'' as used in this section, includes, but is not limited to, unlimited duration.

(h) This section shall become operative on January 1, 2006.

SEC. 12. Section 33490 of the Health and Safety Code is amended to read:

33490. (a) (1) (A) On or before December 31, 1994, and each five years thereafter, each agency that has adopted a redevelopment plan prior to December 31, 1993, shall adopt, after a public hearing, an implementation plan that shall contain the specific goals and objectives of the agency for the project area, the specific programs, including potential projects, and estimated expenditures proposed to be made during the next five years, and an explanation of how the goals and objectives, programs, and expenditures will eliminate blight within the project area and implement the requirements of Sections 33334.2, 33334.4, 33334.6, and 33413. After adoption of the first implementation plan, the parts of the implementation plan that address Sections 33334.2, 33334.4, 33334.6, and 33413 shall be adopted every five years either in conjunction with the housing element cycle or the implementation plan cycle. The agency may amend the implementation plan after conducting a public hearing on the proposed amendment. If an action attacking the adoption, approval, or validity of a redevelopment plan adopted prior to January 1, 1994, has been brought pursuant to Chapter 5 (commencing with Section 33500), the first implementation plan required pursuant to this section shall be adopted within six months after a final judgment or order has been entered. Subsequent implementation plans required pursuant to this section shall be adopted pursuant to the terms of this section, and as if the first implementation plan had been adopted on or before December 31, 1994.

(B) Adoption of an implementation plan shall not constitute an approval of any specific program, project, or expenditure and shall not change the need to obtain any required approval of a specific program, project, or expenditure from the agency or community. The adoption of an implementation plan shall not constitute a project within the meaning of Section 21000 of the Public Resources Code. However, the inclusion of a specific program, potential project, or expenditure in an implementation plan prepared pursuant to subdivision (c) of Section 33352 in conjunction with a redevelopment plan adoption shall not eliminate analysis of those programs, potential projects, and

expenditures in the environmental impact report prepared pursuant to subdivision (k) of Section 33352 to the extent that it would be otherwise required. In addition, the inclusion of programs, potential projects, and expenditures in an implementation plan shall not eliminate review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), at the time of the approval of the program, project, or expenditure, to the extent that it would be otherwise required.

(2) (A) A portion of the implementation plan shall address the agency housing responsibilities and shall contain a section addressing Sections 33334.2, 33334.4, and 33334.6, the Low and Moderate Income Housing Fund, and, if subdivision (b) of Section 33413 applies, a section addressing agency-developed and project area housing. The section addressing the Low and Moderate Income Housing Fund shall contain:

(i) The amount available in the Low and Moderate Income Housing Fund and the estimated amounts which will be deposited in the Low and Moderate Income Housing Fund during each of the next five years.

(ii) A housing program with estimates of the number of new, rehabilitated, or price-restricted units to be assisted during each of the five years and estimates of the expenditures of moneys from the Low and Moderate Income Housing Fund during each of the five years.

(B) For each project area to which subdivision (b) of Section 33413 applies, the section addressing the agency developed and project area housing shall contain:

(i) Estimates of the number of new, substantially rehabilitated or price-restricted residential units to be developed or purchased within one or more project areas, both over the life of the plan and during the next 10 years.

(ii) Estimates of the number of units of very low, low-, and moderate-income households required to be developed within one or more project areas in order to meet the requirements of paragraph (2) of subdivision (b) of Section 33413, both over the life of the plan and during the next 10 years.

(iii) The number of units of very low, low-, and moderate-income households which have been developed within one or more project areas which meet the requirements of paragraph (2) of subdivision (b) of Section 33413.

(iv) Estimates of the number of agency developed residential units which will be developed during the next five years, if any, which will be governed by paragraph (1) of subdivision (b) of Section 33413.

(v) Estimates of the number of agency developed units for very low, low-, and moderate-income households which will be developed by the agency during the next five years to meet the requirements of paragraph (1) of subdivision (b) of Section 33413.

(3) If the implementation plan contains a project that will result in the destruction or removal of dwelling units that will have to be replaced pursuant to subdivision (a) of Section 33413, the implementation plan shall identify proposed locations suitable for those replacement dwelling units.

(4) For a project area that is within six years of the time limit on the effectiveness of the redevelopment plan established pursuant to Section 33333.2 or 33333.6, the portion of the implementation plan addressing the housing responsibilities shall specifically address the ability of the agency to comply, prior to the time limit on the effectiveness of the redevelopment plan, with subdivision (a) of Section 33413 with respect to replacement dwelling units, subdivision (b) of Section 33413 with respect to project area housing, and the disposition of the remaining moneys in the Low and Moderate Income Housing Fund.

(b) For a project area for which a redevelopment plan is adopted on or after January 1, 1994, the implementation plan prepared pursuant to subdivision (c) of Section 33352 shall constitute the initial implementation plan and thereafter the agency after a public hearing shall adopt an implementation plan every five years commencing with the fifth year after the plan has been adopted. Agencies may adopt implementation plans that include more than one project area.

(c) Every agency, at least once within the five-year term of the plan, shall conduct a public hearing and hear testimony of all interested parties for the purpose of reviewing the redevelopment plan and the corresponding implementation plan for each redevelopment project within the jurisdiction and evaluating the progress of the redevelopment project. The hearing required by this subdivision shall take place no earlier than two years and no later than three years after the adoption of the implementation plan. An agency may hold one hearing for two or more project areas if those project areas are included within the same implementation plan.

(d) Notice of public hearings conducted pursuant to this section shall be published pursuant to Section 6063 of the Government Code and posted in at least four permanent places within the project area for a period of three weeks. Publication and posting shall be completed not less than 10 days prior to the date set for hearing.

SEC. 13. Section 33492.13 of the Health and Safety Code is amended to read:

33492.13. (a) A redevelopment plan, adopted pursuant to this chapter and containing the provisions set forth in Section 33670, shall contain all of the following limitations:

(1) A limitation on the number of dollars of taxes which may be divided and allocated to the redevelopment agency pursuant thereto. Taxes shall not be divided and shall not be allocated to the

redevelopment agency beyond this limitation, except by amendment of the redevelopment plan pursuant to Section 33354.6, or as necessary to comply with subdivision (a) of Section 33333.8.

(2) (A) The time limit on the establishing of loans, advances, and indebtedness to be paid with the proceeds of property taxes received pursuant to Section 33670 to finance in whole or in part the redevelopment project, which may not exceed 20 years from the date the county auditor certifies pursuant to Section 33492.9, except by amendment of the redevelopment plan as authorized by subparagraph (B). The loans, advances, or indebtedness may be repaid over a period of time longer than the time limit as provided in this section. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond this time limitation, except as necessary to comply with subdivision (a) of Section 33333.8.

(B) The time limitation established by subparagraph (A) may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, that (i) substantial blight remains within the project area; (ii) this blight cannot be eliminated without the establishment of additional debt; and (iii) the elimination of blight cannot reasonably be accomplished by private enterprise acting alone or by the legislative body's use of financing alternatives other than tax increment financing. However, this amended time limitation may not exceed 30 years from the date the county auditor certifies pursuant to Section 33492.9, except as necessary to comply with subdivision (a) of Section 33333.8.

(3) A time limit, not to exceed 30 years from the date the county auditor certifies pursuant to Section 33492.9, on the effectiveness of the redevelopment plan. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act pursuant to the redevelopment plan except to pay previously incurred indebtedness, comply with subdivision (a) of Section 33333.8, and enforce existing covenants or contracts.

(4) A time limit, not to exceed 45 years from the date the county auditor certifies pursuant to Section 33492.9, to repay indebtedness with the proceeds of property taxes received pursuant to Section 33670. After the time limit established pursuant to this paragraph, an agency may not receive property taxes pursuant to Section 33670, except as necessary to comply with subdivision (a) of Section 33333.8.

(b) (1) A redevelopment plan, adopted pursuant to this chapter, that does not contain the provisions set forth in Section 33670 shall contain the limitations in paragraph (2).

(2) A time limit, not to exceed 12 years from the date the county auditor certifies pursuant to Section 33492.9, for commencement of eminent domain proceedings to acquire property within the project area.

This time limitation may be extended only by amendment of the redevelopment plan.

SEC. 14. Section 33607.7 of the Health and Safety Code is amended to read:

33607.7. (a) This section shall apply to a redevelopment plan amendment for any redevelopment plans adopted prior to January 1, 1994, that increases the limitation on the number of dollars to be allocated to the redevelopment agency or that increases, or eliminates pursuant to paragraph (1) of subdivision (e) of Section 33333.6, the time limit on the establishing of loans, advances, and indebtedness established pursuant to paragraphs (1) and (2) of subdivision (a) of Section 33333.6, as those paragraphs read on December 31, 2001, or that lengthens the period during which the redevelopment plan is effective if the redevelopment plan being amended contains the provisions required by subdivision (b) of Section 33670. However, this section shall not apply to those redevelopment plans that add new territory.

(b) If a redevelopment agency adopts an amendment that is governed by the provisions of this section, it shall pay to each affected taxing entity either of the following:

(1) If an agreement exists that requires payments to the taxing entity, the amount required to be paid by an agreement between the agency and an affected taxing entity entered into prior to January 1, 1994.

(2) If an agreement does not exist, the amounts required pursuant to subdivisions (b), (c), (d), and (e) of Section 33607.5, until termination of the redevelopment plan, calculated against the amount of assessed value by which the current year assessed value exceeds an adjusted base year assessed value. The amounts shall be allocated between property taxes and educational facilities according to the appropriate formula in paragraph (3) of subdivision (a) of Section 33607.5. In determining the applicable amount under Section 33607.5, the first fiscal year shall be the first fiscal year following the fiscal year in which the adjusted base year value is determined.

(c) The adjusted base year assessed value shall be the assessed value of the project area in the year in which the limitation being amended would have taken effect without the amendment or, if more than one limitation is being amended, the first year in which one or more of the limitations would have taken effect without the amendment. The agency shall commence making these payments pursuant to the terms of the agreement, if applicable, or, if an agreement does not exist, in the first fiscal year following the fiscal year in which the adjusted base year value is determined.

SEC. 15. Section 50093 of the Health and Safety Code is amended to read:

50093. ''Persons and families of low or moderate income'' means persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. However, the agency and the department jointly, or either acting with the concurrence of the Secretary of the Business and Transportation Agency, may permit the agency to use higher income limitations in designated geographic areas of the state, upon a determination that 120 percent of the median income in the particular geographic area is too low to qualify a substantial number of persons and families of low or moderate income who can afford rental or home purchase of housing financed pursuant to Part 3 (commencing with Section 50900) without subsidy.

''Persons and families of low or moderate income'' includes very low income households, as defined in Section 50105, extremely low income households, as defined in Section 50106, and lower income households as defined in Section 50079.5, and includes persons and families of extremely low income, persons and families of very low income, persons and families of low income, persons and families of moderate income, and middle-income families. As used in this division:

(a) ''Persons and families of low income'' or ''persons of low income'' means persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(b) ''Persons and families of moderate income'' or ''middle-income families'' means persons and families of low or moderate income whose income exceeds the income limit for lower income households.

(c) ''Persons and families of median income'' means persons and families whose income does not exceed the area median income, as adjusted by the department for family size in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

As used in this section, ''area median income'' means the median family income of a geographic area of the state, as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. In the event these federal determinations of area median income are discontinued, the department shall establish and publish as regulations income limits for persons and families of median income for all geographic areas of the state at 100 percent of area median income, and for persons and families of low or moderate income for all geographic

areas of the state at 120 percent of area median income. These income limits shall be adjusted for family size and shall be revised annually.

For purposes of this section, the department shall file, with the Office of Administrative Law, any changes in area median income and income limits determined by the United States Department of Housing and Urban Development, together with any consequent changes in other derivative income limits determined by the department pursuant to this section. These filings shall not be subject to Article 5 (commencing with Section 11346) or Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, but shall be effective upon filing with the Office of Administrative Law and shall be published as soon as possible in the California Regulatory Code Supplement and the California Code of Regulations.

The department shall establish and publish a general definition of income, including inclusions, exclusions, and allowances, for qualifying persons under the income limits of this section and Sections 50079.5, 50105, and 50106 to be used where no other federal or state definitions of income apply. This definition need not be established by regulation.

Nothing in this division shall prevent the agency or the department from adopting separate family size adjustment factors or programmatic definitions of income to qualify households, persons, and families for programs of the agency or department, as the case may be.

SEC. 16. Section 50106 is added to the Health and Safety Code, to read:

50106. ''Extremely low income households'' means persons and families whose incomes do not exceed the qualifying limits for extremely low income families as established and amended from time to time by the Secretary of Housing and Urban Development and defined in Section 5.603(b) of Title 24 of the Code of Federal Regulations. These limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for extremely low income households for all geographic areas of the state at 30 percent of area median income, adjusted for family size and revised annually. As used in this section, ''area median income'' means the median family income of a geographic area of the state.

SEC. 17. (a) The Legislature finds and declares that in 1993 the Legislature adopted time limits contained in Section 33333.6 of the Health and Safety Code that applied to project areas adopted prior to January 1, 1994. The Legislature further finds and declares that some community redevelopment agencies that adopted certain project areas prior to the establishment of these limits will not be able to eliminate

blight within those project areas within those limits and that it is necessary to allow the limits within these project areas to be extended to eliminate significant remaining blight.

(b) The Legislature further finds and declares that authorizing the extension of these limits within those project areas will have a financial effect upon the state and that because of this financial effect it will be necessary for one or more appropriate state agencies to have the authority to take appropriate actions to ensure that these time limits are extended only for those project areas adopted on or before December 31, 1993, that contain significant remaining blight as that term was defined by the Legislature in 1993.

SEC. 18. Sections 11.5 and 11.6 of this bill incorporate amendments to Section 33413 of the Health and Safety Code proposed by both this bill and AB 637. They shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 33413 of the Health and Safety Code, and AB 637 adds Section 33413 to the Health and Safety Code, and (3) this bill is enacted after AB 637, in which case Section 11 of this bill shall not become operative.

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## CHAPTER 742

An act to add Section 14018.1 to the Welfare and Institutions Code, relating to Medi-Cal.

[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 14018.1 is added to the Welfare and Institutions Code, to read:

14018.1. The department shall prospectively notify a Medi-Cal managed care plan of the date of the regularly scheduled annual redetermination of a Medi-Cal beneficiary in a disabled aid category, who is enrolled in that plan and where eligibility redetermination is the responsibility of the department. Nothing in this section shall provide a beneficiary with additional Medi-Cal coverage due to the department's failure to provide this notice.

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# CHAPTER 743

An act relating to affordable housing, and making an appropriation therefor.

[Approved by Governor October 10, 2001. Filed with Secretary of State October 11, 2001.]

I am signing Senate Bill 891, however I am reducing the General Fund appropriation to $100,000. This bill would have authorized the expenditure of $250,000 for the New Economics for Women transitional housing project, known as La Posada. This program and those it serves will benefit greatly from the added funds this bill will provide for needed classroom space and a security system.

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 fund less than the requested amount.

I would also note that this bill designates the Department of Parks and Recreation as the department that would administer this grant. This is an inappropriate designation. I am requesting cleanup legislation in January that would designate the Department of Housing and Community Development as administrator of this grant to the La Posada project.

GRAY DAVIS, Governor

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

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

(a) The history of our nation and this state is a rich and enduring tapestry woven with the threads of many remarkable lives and cultures.

(b) The lives, work, and contributions of immigrants and their families have added strength, vitality, and purpose to that tapestry.

(c) Immigrants constitute one of the fastest growing segments of our population, with single women with young children comprising an increasing percentage of immigrants, homeless, and domestic violence victims.

(d) New Economics for Women (NEW) is the country's only nonprofit community development corporation developed and operated by Latinas. Founded in 1985 in Los Angeles' Belmont/Pico-Union district of downtown Los Angeles, NEW's mission is to assist young, single parent families in their transition from poverty to economic self-sufficiency. NEW accomplishes this mission through a wide range of housing, health, consumer, and business initiatives.

(e) NEW was founded in 1985 as a nonprofit organization and has been an innovative leader in developing affordable transitional housing and economic self-sufficiency programs that meet the needs of single parent families of the Belmont area in downtown Los Angeles. NEW has developed and also manages additional transitional housing in east Los Angeles, San Pedro, and the San Fernando Valley with onsite services designed to empower women and families to reach their goals of

economic prosperity through job and skill development, consumer and financial management education, computer training, and parenting classes.

(f) La Posada is NEW's unique affordable housing development, which opened in 1996. La Posada is designed to improve the lives of an especially vulnerable population, single teen mothers and their children, by offering a real opportunity and safe haven from poverty, domestic violence, and homelessness. The complementary intermediate term housing and customized social services are critical to breaking the cycle of poverty and enabling young women and their children to remove or reduce the economic and social barriers to employment and independent living.

(g) New residents increasingly arrive from the streets, emergency shelters, or domestic violence situations with young infants. Most are at high risk for destructive behavior, which, in addition to early pregnancy, can lead to continued economic dependence and lack of opportunity, both of which are passed on to the next generation. During its five-year existence, La Posada has served as a successful transition for young mothers from poverty, domestic violence, homelessness, and welfare dependency to independent, healthy, and economically independent self-sufficient young women and families.

(h) While the number of births to unmarried mothers has decreased in California over the past 10 years to 32.8 percent in 1998, which places our state at 27th in the nation, the phenomenon of teen pregnancy continues to plague our youth at an alarming rate.

(i) La Posada's demonstrated success with targeted, consistent intervention and a safe, stable residence can reverse the cycle of poverty and violence, and has resulted in positive change and a foundation for self-sufficient living for these young families.

SEC. 2. The sum of two hundred fifty thousand dollars ($250,000) is hereby appropriated from the General Fund to the Department of Parks and Recreation for allocation as a grant to the governing board of New Economics for Women to provide for the capital outlay needs of the La Posada Housing Project.

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## CHAPTER 744

An act to amend Section 51296.3 of the Government Code, and to amend Sections 75.31, 534, 749, and 1605 of, and to repeal Sections 10753.1 and 10753.9 of, the Revenue and Taxation Code, relating to taxation.

[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 51296.3 of the Government Code is amended to read:

51296.3. Notwithstanding any provision of the Cortese-Knox Local Government Reorganization Act of 1985 (Division 3 (commencing with Section 56000)), a local agency formation commission shall not approve a change of organization or reorganization that would result in the annexation of land within a designated farmland security zone to a city. However, this subdivision shall not apply under any of the following circumstances:

(a) If the farmland security zone is located within a designated, delineated area that has been approved by the voters as a limit for existing and future urban facilities, utilities, and services.

(b) If annexation of a parcel or a portion of a parcel is necessary for the location of a public improvement, as defined in Section 51290.5, except as provided in Section 51296.5 or 51296.6.

(c) If the landowner consents to the annexation.

SEC. 2. Section 75.31 of the Revenue and Taxation Code is amended to read:

75.31. (a) Whenever the assessor has determined a new base year value as provided in Section 75.10, the assessor shall send a notice to the assessee showing the following:

(1) The new base year value of the property that has changed ownership, or the new base year value of the completed new construction that shall be added to the existing taxable value of the remainder of the property.

(2) The taxable value appearing on the current roll, and if the change in ownership or completion of new construction occurred between January 1 and May 31, the taxable value on the roll being prepared.

(3) The date of the change in ownership or completion of new construction.

(4) The amount of the supplemental assessments.

(5) The exempt amount, if any, on the current roll or the roll being prepared.

(6) The date the notice was mailed.

(7) A statement that the supplemental assessment was determined in accordance with Article XIII A of the California Constitution that generally requires reappraisal of property whenever a change in ownership occurs or property is newly constructed.

(8) Any other information which the board may prescribe.

(b) In addition to the information specified in subdivision (a), the notice shall inform the assessee of the procedure for filing a claim for exemption that is to be filed within 30 days of the date of the notice.

(c) (1) The notice shall advise the assessee of the right to an informal review and the right to appeal the supplemental assessment, and, unless subject to paragraph (2) or (3), that the appeal shall be filed within 60 days of the date of mailing printed on the notice or the postmark date therefor, whichever is later. For the purposes of equalization proceedings, the supplemental assessment shall be considered an assessment made outside of the regular assessment period as provided in Section 1605.

(2) For counties in which the board of supervisors has adopted the provisions of subdivision (c) of Section 1605, and the County of Los Angeles, the notice shall advise the assessee of the right to appeal the supplemental assessment, and that the appeal shall, except as provided in paragraph (3), be filed within 60 days of the date of mailing printed on the tax bill or the postmark date therefor, whichever is later. For the purposes of equalization proceedings, the supplemental assessment shall be considered an assessment made outside of the regular assessment period as provided in Section 1605.

(3) (A) If the taxpayer does not receive a notice in accordance with paragraph (1) at least 15 days prior to the deadline to file the application described in Section 1603, the affected party or his or her agent may file an application within 60 days of the date of mailing printed on the tax bill or the postmark thereof, whichever is later, along with an affidavit declaring under penalty of perjury that the notice was not timely received.

(B) Notwithstanding any other provision of this subdivision, an application for reduction in a supplemental assessment may be filed within 12 months following the month in which the assessee is notified of that assessment, if the affected party or his or her agent and the assessor stipulate that there is an error in assessment as the result of the exercise of the assessor's judgment in determining the full cash value of the property and a written stipulation as to the full cash value and the assessed value is filed in accordance with Section 1607.

(d) The notice shall advise the assessee of both of the following:

(1) The requirements, procedures, and deadlines with respect to an application for the reduction of a base year value pursuant to Section 80, or the reduction of an assessment pursuant to Section 1603.

(2) The criteria under Section 51 for the determination of taxable value, and the requirement of Section 1602 that the custodial officer of the local roll make the roll, or a copy thereof, available for inspection by all interested parties during regular office hours.

(e) The notice shall advise the assessee that if the supplemental assessment is a negative amount the auditor shall make a refund of a portion of taxes paid on assessments made on the current roll, or the roll being prepared, or both.

(f) The notice shall be furnished by the assessor to the assessee by regular United States mail directed to the assessee at the assessee's latest address known to the assessor.

(g) The notice given by the assessor under this section shall be on a form prescribed by the State Board of Equalization.

SEC. 3. Section 534 of the Revenue and Taxation Code is amended to read:

534. (a) Assessments made pursuant to Article 3 (commencing with Section 501) or this article shall be treated like, and taxed at the same rate applicable to, property regularly assessed on the roll on which it is entered, unless the assessment relates to a prior year and then the tax rate of the prior year shall be applied, except that the tax rate for years prior to the 1981–82 fiscal year shall be divided by four.

(b) No assessment described in subdivision (a) shall be effective for any purpose, including its review, equalization and adjustment by the Board of Equalization, until the assessee has been notified thereof personally or by United States mail at his or her address as contained in the official records of the county assessor. For purposes of Section 532, the assessment shall be deemed made on the date on which it is entered on the roll pursuant to Section 533, if the assessee is notified of the assessment within 60 days after the statute of limitations or the placing of the escape assessment on the assessment roll. Otherwise the assessment shall be deemed made only on the date the assessee is so notified.

(c) The notice given by the assessor pursuant to this section shall include all of the following:

(1) The date the notice was mailed.

(2) Information regarding the assessee's right to an informal review and the right to appeal the assessment, and except in a case in which paragraph (3) applies, that the appeal shall be filed within 60 days of the date of mailing printed on the notice or the postmarked date therefor, whichever is later. For the purposes of equalization proceedings, the assessment shall be considered an assessment made outside of the regular assessment period as provided in Section 1605.

(3) For counties in which the board of supervisors has adopted a resolution in accordance with subdivision (c) of Section 1605, and the County of Los Angeles, the notice shall advise the assessee of the right to appeal the assessment, and that the appeal shall be filed within 60 days of the date of mailing printed on the tax bill or the postmark therefor, whichever is later. For the purposes of equalization proceedings, the

assessment shall be considered an assessment made outside of the regular assessment period as provided in Section 1605.

(4) A description of the requirements, procedures, and deadlines with respect to an application for the reduction of an assessment pursuant to Section 1605.

(d) (1) The notice given by the assessor under this section shall be on a form prescribed by the board.

(2) Giving of the notice required by Section 531.8 shall not satisfy the requirements of this section.

SEC. 4. Section 749 of the Revenue and Taxation Code is amended to read:

749. Section 743 shall be applicable to hearings on petitions for correction of an allocated assessment and the board shall notify the petitioner of its decision by mail. The decision shall include written findings and conclusions of the board if requested at or prior to the commencement of the hearing. Decisions of the board on petitions for correction of an allocated assessment shall be completed on or before December 31.

SEC. 5. Section 1605 of the Revenue and Taxation Code is amended to read:

1605. (a) An assessment made outside of the regular assessment period is not effective for any purpose, including its review, equalization and adjustment by the county board, until the assessee has been notified thereof personally or by United States mail at the assessee's address as contained in the official records of the county assessor. For purposes of this subdivision, for counties in which the board of supervisors has adopted the provisions of subdivision (c) and the County of Los Angeles, receipt by the assessee of a tax bill based on that assessment shall suffice as the notice.

(b) Upon application for reduction in assessment pursuant to subdivision (a) of Section 1603, the assessment shall be subject to review, equalization, and adjustment by the county board. In the case of an assessment made pursuant to Article 2 (commencing with Section 75.10) of Chapter 3.5 of Part 0.5, or Article 3 (commencing with Section 501) of Chapter 3 of Part 2 that is made outside the regular assessment period as defined in subdivision (f), or an assessment made pursuant to Article 4 (commencing with Section 531) of Chapter 3 of Part 2, the application shall be filed with the clerk in accordance with the applicable of the following:

(1) In a county other than the County of Los Angeles or a county in which the board of supervisors has adopted a resolution in accordance with subdivision (c), no later than 60 days after the date of mailing printed on the notice of assessment, or the postmark therefor, whichever is later. If the taxpayer does not receive the notice of assessment

described in Section 75.31 or 534 at least 15 calendar days prior to the deadline established in the foregoing sentence, the party affected, or his or her agent, may file the application within 60 days of the date of mailing printed on the tax bill or the postmark therefor, whichever is later, along with an affidavit declaring under penalty of perjury that the notice of assessment was not timely received.

(2) In the County of Los Angeles or any county in which the board of supervisors has adopted a resolution in accordance with subdivision (c), an application subject to this subdivision shall be filed within the period specified in that subdivision.

(c) The board of supervisors of any county may by resolution require that the application for reduction pursuant to subdivision (a) of Section 1603 be filed with the clerk no later than 60 days after the date of mailing printed on the tax bill or the postmark therefor, whichever is later.

(d) In counties where assessment appeals boards have not been created and are not in existence, at any regular meeting, the board of supervisors, on the request of the assessor or any taxpayer, shall sit as the county board to equalize any assessments made by the assessor outside the regular assessment period for those assessments. Notwithstanding any other provision of law to the contrary, in any county in which assessment appeals boards have been created and are in existence, the time for equalization of assessments made outside the regular assessment period for those assessments, including assessments made pursuant to Sections 501, 503, 504, 531, and 531.5, shall be prescribed by rules adopted by the board of supervisors.

(e) If an audit of the books and records of any profession, trade, or business pursuant to Section 469 discloses property subject to an escaped assessment for any year, then the original assessment of all property of the assessee at the location of the profession, trade, or business for that year shall be subject to review, equalization and adjustment by the county board of equalization or assessment appeals board pursuant to this chapter, except in those instances when that property had previously been equalized for the year in question by the county board of equalization or assessment appeals board. The application shall be filed with the clerk no later than 60 days after the date on which the assessee was notified. Receipt by the assessee of a tax bill based upon that assessment shall suffice as that notice.

(f) For purposes of subdivision (a), ''regular assessment period'' means January 1 to and including July 1 of the calendar year in which the assessment, other than escape assessments, should have been enrolled if it had been timely made.

SEC. 6. Section 10753.1 of the Revenue and Taxation Code, as amended by Section 160 of Chapter 427 of the Statutes of 1992, is repealed.

SEC. 7. Section 10753.1 of the Revenue and Taxation Code, as amended by Section 7 of Chapter 861 of the Statutes of 2000, is repealed.

SEC. 8. Section 10753.9 of the Revenue and Taxation Code, as added by Section 3 of Chapter 474 of the Statutes of 1991, is repealed.

SEC. 9. Section 10753.9 of the Revenue and Taxation Code, as amended by Section 9 of Chapter 861 of the Statutes of 2000, is repealed.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

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## CHAPTER 745

An act to amend Sections 4425, 6086.15, 6094.5, 7011.8, and 7017 of, and to repeal Sections 1616.1 and 12029 of, the Business and Professions Code, to amend Section 116.950 of the Code of Civil Procedure, to amend Sections 30.5, 8215, 8358, 8451, 32237, 32239.5, 35179.2, 44252.9, 44259.5, 44279.2, 44784, 49413, 52052, 52656, 54696, 56885, 58523, 60810, 66015, 66755, 67301, 67359.20, 71028, 87104, 89753, 89761, and 99306 of, and to repeal Sections 15750, 17001.5, 44329, 49590.5, 58922, 66293, 69733, 72681, 78217, and 99105 of, the Education Code, to amend Section 7571 of the Family Code, to repeal Sections 256, 8052, and 32955 of the Financial Code, to amend Sections 1000.5, 1796, 2079, 2645, 3409, 3951, 4904, 6450, and 6599 of, and to repeal Sections 2099, 6459, and 16533 of, the Fish and Game Code, to amend Sections 13135 and 76906 of, and to repeal Sections 4101.5, 13127.93, and 14104 of, the Food and Agricultural Code, to amend Sections 3114, 7585, 8654.1, 8670.55, 8879.3, 10242.5, 10601, 11007, 14070.2, 14660.1, 15277, 15333.3, 15333.4, 15378, 15813.6, 17562, 19793, 19993.05, 21662, 27279.4, 30401, 51207, 54238.7, 68511.2, 68604, 77009, 77604, 77605, and 77654 of, and to repeal Sections 8855.5, 8855.7, 8855.8, 11815, 11818, 12095.60, 13332.06, 13336.5, 14035.6, 15301.5, 16582, 16649.91, 30606, 65302.6, 67523, 70219, 75060.3, 75560.3, 92204, and 96103 of, the Government Code, to amend Sections 1200 and 3927 of, and to repeal Sections 65.8 and 658.6 of, the Harbors and Navigation Code, to amend Sections 1342.1, 1422, 11759.4, 18400.1, 25200.11, 25200.14.1, 25200.17, 25299.97, 33760, 34312.3, 39153, 44003, 46077, 50408, 50834, 57007, 104145, 104370, 108875, 119308, 120475, 120480, 120805, and 123775 of, and to repeal Sections 13143.10, 25171, 25171.5, 25245.6, 25269.9, 40453, 50806, 52045, 52570, 100146, and

100340 of, the Health and Safety Code, to amend Sections 10089.40 and 12693.93 of, and to repeal Section 10890 of, the Insurance Code, to amend Section 3214 of the Labor Code, to amend Section 1335 of the Military and Veterans Code, to amend Sections 1001.65, 7433, 13602, and 13731 of, and to repeal Sections 1170.6, 9008, 13510.6, and 13892 of, the Penal Code, to repeal Sections 10350 and 12104 of the Public Contract Code, to amend Sections 5094.2, 5096.244, 5631, 6211, 6230, 6231, 6477, 6916, 14314, 14537, 25403.5, 31108, 31163, 42005, 42871, and 71040 of, and to repeal Sections 674, 5017, 5780.17, 9756, 19524, 22052, and 25310.5 of, the Public Resources Code, to amend Sections 383, 398.5, 495.7, 739.3, 28767.3, 130292, and 132410 of the Public Utilities Code, to amend Section 7273 of the Revenue and Taxation Code, to amend Sections 100, 30796.9, 30950.3, and 30961 of, and to repeal Sections 1965 and 30895 of, the Streets and Highways Code, to amend Sections 5007, 9616, 9616.1, 10532, 15037, 15076.5, and 17002 of, and to repeal Sections 1088.7, 1274.05, 5202, 9614, 9616.5, and 10522 of, the Unemployment Insurance Code, to amend Sections 1810.7, 5023, 14602.1, and 35581 of, and to repeal Section 2936 of, the Vehicle Code, to amend Sections 8610, 11912, 12830, 12875, 12879.5, 12890.4, and 12939 of, and to repeal Sections 232, 10010, 10756, 11156, 12308, 12928.5, 12929.47, 13467, 14014, and 14919 of the Water Code, to amend Sections 4640.6, 4669.75, 5673, 10609.5, 10740, 10790, 11329, 11450.3, 11461.1, 11487.5, 14017.1, 14085.5, 14103.2, 14104.3, 14132, 14132.90, 14133.5, 14138.5, 14145.1, 14148, 14148.8, 14501, 16500.5, 18206, and 18240 of, and to repeal Sections 366.28, 5586, 10603.3, 14618, 15452, and 18214 of, the Welfare and Institutions Code, to amend Section 1 of Chapter 74 of the Statutes of 1978, to repeal Section 3 of Chapter 1523 of the Statutes of 1985, to amend Section 2 of Chapter 1495 of the Statutes of 1988, to amend Section 1 of Chapter 1350 of the Statutes of 1989, to repeal Section 1 of Chapter 674 of the Statutes of 1990, to amend Section 1 of Chapter 1621 of the Statutes of 1990, to repeal Section 2 of Chapter 1012 of the Statutes of 1993, to repeal Resolution Chapter 100 of the Statutes of 1995, and to amend Section 2 of Chapter 881 of the Statutes of 1997, relating to reports submitted to the Legislature, the Governor, and state entities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 1616.1 of the Business and Professions Code is repealed.

SEC. 2. Section 4425 of the Business and Professions Code is amended to read:

4425. (a) As a condition of a pharmacy's participation in the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000) of Division 9 of the Welfare and Institutions Code, the pharmacy, upon presentation of a valid prescription for the patient and the patient's Medicare card, shall charge Medicare beneficiaries a price that does not exceed the Medi-Cal reimbursement rate for prescription medicines, and an amount, as set by the State Department of Health Services to cover electronic transmission charges. However, Medicare beneficiaries shall not be allowed to use the Medi-Cal reimbursement rate for over-the-counter medications or compounded prescriptions.

(b) The State Department of Health Services shall provide a mechanism to calculate and transmit the price to the pharmacy, but shall not apply the Medi-Cal drug utilization review process for purposes of this section.

(c) The State Department of Health Services shall monitor pharmacy participation with the requirements of subdivision (a).

(d) If prescription drugs are added to the scope of benefits available under the federal Medicare program, the Senate Office of Research shall report that fact to the appropriate committees of the Legislature. It is the intent of the Legislature to evaluate the need to continue the implementation of this article under those circumstances.

SEC. 3. Section 6086.15 of the Business and Professions Code is amended to read:

6086.15. (a) The State Bar shall issue an Annual Discipline Report by April 30 of each year describing the performance and condition of the State Bar discipline system. The report shall cover the previous calendar year and shall include accurate and complete descriptions of all of the following:

(1) The existing backlog of cases within the discipline system, including, but not limited to, the number of complaints as of December 31 of the preceding year that were pending beyond six months after receipt without dismissal, admonition, or the filing of a notice to show cause, and tables showing time periods beyond six months and the number in each category and a discussion of the reason for the extended periods.

(2) The number of inquiries and complaints and their disposition.

(3) The number and types of matters self-reported by members of the State Bar pursuant to subdivision (o) of Section 6068 and subdivision (c) of Section 6086.8.

(4) The number and types of matters reported by other sources pursuant to Sections 6086.7 and 6086.8.

(5) The speed of complaint handling and dispositions by type.

(6) The number and types of filed notices to show cause and formal disciplinary outcomes.

(7) The number and types of informal discipline outcomes, including petitions to terminate practice, interim suspensions and license restrictions, criminal conviction monitoring, letters of warning, private reprovals, admonitions, and agreements in lieu of discipline.

(8) A description of the programs of the State Bar directed at assuring honesty and competence by attorneys.

(9) A description of the programs of the State Bar directed at preventing acts warranting discipline.

(10) A description of the condition of the Client Security Fund, including an accounting of payouts.

(11) An accounting of the cost of the discipline system by function.

(b) The Annual Discipline Report shall include statistical information presented in a consistent manner for year-to-year comparison and shall compare the information required under subdivision (a) to similar information for the previous three years. The report shall include the general data and tables included in the previous reports of the State Bar Discipline Monitor where feasible.

(c) The Annual Discipline Report shall be presented to the Chief Justice of California, to the Governor, to the Speaker of the Assembly, to the President pro Tempore of the Senate, and to the Assembly and Senate Judiciary Committees, for their consideration and shall be considered a public document.

SEC. 4. Section 6094.5 of the Business and Professions Code is amended to read:

6094.5. (a) It shall be the goal and policy of the disciplinary agency to dismiss a complaint, admonish the attorney, or forward a completed investigation to the Office of Trial Counsel within six months after receipt of a written complaint. As to complaints designated as complicated matters by the Chief Trial Counsel, it shall be the goal and policy of the disciplinary agency to dismiss, terminate by admonition, or forward those complaints to the Office of Trial Counsel within 12 months. A notice to show cause is a public record when filed. This goal and policy is not jurisdictional and shall not serve as a bar or defense to, any disciplinary investigation or proceeding.

(b) The disciplinary agency, subject to its record retention policy, shall respond within a reasonable time to inquiries as to the status of pending disciplinary cases in which a notice to show cause has been filed, or as to public discipline that has been imposed upon an attorney in California, or to the extent known by the agency, elsewhere, and, to the extent such information is known to the agency, all criminal cases in which an indictment or information has been brought charging a felony against an attorney or an attorney has been convicted of a felony, or

convicted of any misdemeanor committed in the course of the practice of law or in any manner such that a client of the attorney was the victim, or any felony or misdemeanor, a necessary element of which, as determined by the statutory or common law definition of the crime, involves improper conduct of an attorney, including interference with the administration of justice, running and capping, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, dishonesty or other moral turpitude, or an attempt of a conspiracy or solicitation of another to commit such a crime. Such information acquired from the disciplinary agency under this section shall not be used by an attorney to solicit business. The disciplinary agency shall adopt regulations to carry out the purposes of this subdivision.

SEC. 5. Section 7011.8 of the Business and Professions Code is amended to read:

7011.8. (a) Any person who reports to, or causes a complaint to be filed with, the Contractors' State License Board that a person licensed by that entity has engaged in professional misconduct, knowing the report or complaint to be false, is guilty of an infraction punishable by a fine not to exceed one thousand dollars ($1,000).

(b) The board may notify the appropriate district attorney or city attorney that a person has made or filed what the entity believes to be a false report or complaint against a licensee.

SEC. 6. Section 7017 of the Business and Professions Code is amended to read:

7017. The board, in addition to the usual periodic reports, shall within 30 days prior to the meeting of the general session of the Legislature submit to the Governor and the Legislature a full and true report of its transactions during the preceding biennium including a complete statement of the receipts and expenditures of the board during the period.

A copy of the report shall be filed with the Secretary of State.

SEC. 7. Section 12029 of the Business and Professions Code is repealed.

SEC. 8. Section 116.950 of the Code of Civil Procedure is amended to read:

116.950. (a) This section shall become operative only if the Department of Consumer Affairs determines that sufficient private or public funds are available in addition to the funds available in the department's current budget to cover the costs of implementing this section.

(b) There shall be established an advisory committee, constituted as set forth in this section, to study small claims practice and procedure, with particular attention given to the improvement of procedures for the enforcement of judgments.

(c) The members of the advisory committee shall serve without compensation, but shall be reimbursed for expenses actually and necessarily incurred by them in the performance of their duties.

(d) The advisory committee shall be composed as follows:

(1) The Attorney General or a representative.

(2) Two consumer representatives from consumer groups or agencies, appointed by the Secretary of the State and Consumer Services Agency.

(3) One representative appointed by the Speaker of the Assembly and one representative appointed by the President pro Tempore of the Senate.

(4) Two representatives appointed by the Board of Governors of the State Bar.

(5) Two representatives of the business community, appointed by the Secretary of the Trade and Commerce Agency.

(6) Six judicial officers who have extensive experience presiding in small claims court, appointed by the Judicial Council. Judicial officers appointed under this subdivision may include judicial officers of the superior court, judicial officers of the municipal court, judges of the appellate courts, retired judicial officers, and temporary judges.

(7) One representative appointed by the Governor.

(8) Two clerks of the court appointed by the Judicial Council.

(e) Staff assistance to the advisory committee shall be provided by the Department of Consumer Affairs, with the assistance of the Judicial Council, as needed.

SEC. 9. Section 30.5 of the Education Code is amended to read:

30.5. (a) Notwithstanding any other provision of law, bilingual education shall be defined as a system of instruction which builds upon the language skills of a pupil whose primary language is neither English nor derived from English. For purposes of this paragraph:

(1) ''Primary language'' is a language, other than English or a language derived from English, which is the language the pupil first learned.

(2) ''Derived from English'' means any dialect, idiom, or language derived from English. Both of the following shall be construed as being derived from English:

(A) Any dialect, idiom, or language that has linguistic roots connected to English.

(B) Any dialect, idiom, or language that has a syntax distinct from English, yet can be traced linguistically as derived from English.

(b) A school district shall not utilize, as part of a bilingual education program, state funds or resources for the purpose of recognition of, or instruction in, any dialect, idiom, or language derived from English, as defined in paragraph (1).

SEC. 10. Section 8215 of the Education Code is amended to read:

8215. (a) There is hereby established a project known as the California Child Care Initiative Project. It is the intent of the Legislature to promote and foster the project in cooperation with private corporations and local governments. The objective of the project is to increase the availability of quality child care programs in the state.

(b) For purposes of this section, the California Child Care Initiative Project means a project to expand the role and functions of selected resource and referral agencies in activities including needs assessment, recruitment and screening of providers, technical assistance, and staff development and training, in order to aid communities in increasing their capability in the number of child care spaces available and the quality of child care services offered.

(c) The Superintendent of Public Instruction shall allocate all state funds appropriated for the California Child Care Initiative Project for the purpose of making grants to those child care resource and referral agencies that have been selected as pilot sites for the project.

(d) The project shall ensure that each dollar of state funds allocated pursuant to subdivision (c) is matched by two dollars ($2) from other sources, including private corporations, the federal government, or local governments.

(e) The grants to the sites made available by the project shall be comprised of a combination of state funds and other funds pursuant to subdivision (d).

(f) The Superintendent of Public Instruction shall develop a data base for the project.

SEC. 11. Section 8358 of the Education Code is amended to read:

8358. (a) By January 31, 1998, the State Department of Education and the State Department of Social Services shall design a form for license-exempt child care providers to use for certifying health and safety requirements to the extent required by federal law. Until the form is adopted, the information required pursuant to Section 11324 of the Welfare and Institutions Code shall continue to be maintained by the county welfare department or contractor, as appropriate.

(b) By January 31, 1998, the State Department of Education and the State Department of Social Services shall do both of the following:

(1) Design a standard process for complaints by parents about the provision of child care that is exempt from licensure.

(2) Design, in consultation with local planning councils, a single application for all child care programs and all families.

(c) (1) County welfare departments and alternative payment programs shall encourage all providers who are licensed or who are exempt from licensure and who are providing care under Section 8351, 8353, or 8354, to secure training and education in basic child development.

(2) Child care provider job training provided to CalWORKs recipients that is funded by either the State Department of Education or the State Department of Social Services shall include information on becoming a licensed child care provider.

(d) The State Department of Education shall increase consumer education and consumer awareness activities so that parents will have the information needed to seek child care of high quality. High quality child care shall include both licensed and license-exempt care.

SEC. 12. Section 8451 of the Education Code is amended to read:

8451. (a) Notwithstanding the provisions of this chapter and implementing regulations, the State Department of Education shall develop a prototype of a new contracting system pursuant to the discussion of relevant issues raised in the preliminary report titled ''Revisions to the Current Contracting System for Child Care and Development Programs'' dated February 6, 1996, as required by the Budget Act of 1995.

(b) The prototype shall be implemented by no more than 5 percent of child care and development contractors.

(c) The department shall develop a plan for the prototype by January 1, 1997, and shall commence testing it July 1, 1997, with any necessary amendments completed by September 1, 1997. The prototype test shall be conducted over a two-year period and may be extended only with the concurrence of the Department of Finance and 30 days' notification to the Joint Legislative Budget Committee. The department may not implement the prototype without the concurrence of the Department of Finance and 30 days' notification to the Joint Legislative Budget Committee. In developing the plan, the department shall fully consult with the Department of Finance, the Office of the Legislative Analyst, and representative child care and development contractors.

(d) Except for separately authorized cost-of-living increases or expansions, the prototype shall neither increase aggregate state costs nor lower the total number of children served by the participating agencies.

(e) An independent evaluation shall be conducted of the prototype.

SEC. 12.5. Section 15750 of the Education Code is repealed.

SEC. 13. Section 17001.5 of the Education Code is repealed.

SEC. 14. Section 32237 of the Education Code is amended to read:

32237. The Superintendent of Public Instruction shall contract for an ongoing independent evaluation of the effectiveness of school violence reduction programs funded by grants pursuant to this article. The evaluation shall determine the effectiveness of each program based upon all of the following criteria:

(a) A reduction in incidents of school violence at the schoolsite where the school violence reduction program is conducted.

(b) A reduction in the number of suspensions or expulsions of pupils for violent behavior at the schoolsite where the school violence reduction program is conducted.

(c) A comparison of incidents of school violence with schools of similar size and pupils of similar socioeconomic background as the schoolsite where the school violence reduction program is conducted.

SEC. 15. Section 32239.5 of the Education Code is amended to read:

32239.5. (a) This article shall be known, and may be cited, as the Machado School Violence Prevention and Response Act of 1999.

(b) A School Violence Prevention and Response Task Force is hereby established, which shall consist of the following members:

(1) The Superintendent of Public Instruction, the Attorney General, the Director of the Office of Criminal Justice Planning, and the Secretary for Education shall be ex officio voting members of the School Violence Prevention and Response Task Force, and shall serve as cochairs of the task force.

(2) Twelve members representing educators, health care practitioners, and members of the law enforcement community, each with expertise in school-based crisis prevention and response appointed as follows:

(A) The Director of the Office of Criminal Justice Planning and the Attorney General shall each appoint three members to the task force. These appointments shall include representatives of the law enforcement and victims' services community. These appointments may include persons with expertise in juvenile justice, gang violence prevention, juvenile probation, victim assistance programs, crisis management, or academic experts in criminology or juvenile delinquency.

(B) The Superintendent of Public Instruction and the Secretary for Education shall each appoint three members to the task force. These appointments shall include representatives of the education and health care practitioner communities. These appointments may include classroom educators, school administrators, school counselors, school psychologists, parents, pupils, mental health providers, or academic experts in child development or violence prevention.

(c) The members of the task force may not receive a salary for their services but shall be reimbursed for their actual and necessary travel and other expenses incurred in the performance of their duties.

(d) The task force shall do all of the following:

(1) Analyze and evaluate current statutes and programs in the area of school-based crisis prevention and response.

(2) Make appropriate policy recommendations on how to enhance state and local programs and training to adequately prepare school districts and county offices of education to meet the challenges

stemming from disruptive and violent acts, or both, on or near school campuses. These recommendations shall include a discussion regarding the manner in which the recommendations may be implemented within existing resources.

(3) Suggest methods for training school personnel on how to recognize risk indicators for pupils that could eventually lead to violence. These suggested methods shall include how to refer pupils to trained personnel, such as school psychologists, counselors, mental health providers, or other designated appropriate staff.

(4) Hold at least two public meetings.

(e) Each of the cochairs shall have the authority to convene subcommittee meetings. However, any findings or recommendations made by a subcommittee, or by any of the other members of the task force, shall be approved by at least three of the four voting members of the task force in order to be incorporated in the report described in paragraph (5) of subdivision (c).

(f) The Office of Criminal Justice Planning shall make staff resources available to the task force.

SEC. 16. Section 35179.2 of the Education Code is amended to read:

35179.2. (a) Subject to funds being appropriated for this purpose, the California Interscholastic Federation is encouraged to establish a statewide panel that includes, at a minimum, the following members: school administrators, school board members, coaches of secondary school athletics, teachers, parents, athletic directors, representatives of higher education, pupils participating in athletics at the secondary school level, and a representative of the State Department of Education, as described in Section 35179.3.

(b) The panel established pursuant to subdivision (a) is encouraged to develop an application process whereby public secondary schools may submit applications to the State Department of Education for grants to offset the costs of education and training of athletic coaches in an education and training program that emphasizes the components set forth in subdivision (c) of Section 35179.1.

(c) The panel established pursuant to subdivision (a) is encouraged to evaluate applications submitted to the State Department of Education pursuant to subdivision (b) and to recommend applicants to the State Department of Education for the award of dollar-for-dollar matching grants, in an amount determined by the department.

SEC. 17. Section 44252.9 of the Education Code is amended to read:

44252.9. (a) The Legislature finds and declares that the effective education of pupils in kindergarten and grades 1 to 12, inclusive, depends substantially on the academic skills, content competence, and

pedagogical preparation of classroom teachers. It is essential that the ongoing administration of the state basic skills proficiency exam for teachers be carried out at all times by a competent contractor who adheres to high standards using sound, effective, and defensible assessment procedures. The administration of this exam is jeopardized by the increasing costs of the exam and statutory restrictions that remain in effect. To preserve and strengthen the screening of teacher candidates in relation to their basic academic skills, the Legislature intends to maintain the state examination that is administered by the commission pursuant to Section 44252.5, and to support needed improvements in exam-related services to teaching credential candidates.

(b) The commission shall make improvements to increase access to the state basic skills proficiency test, and shall improve exam-related services provided to candidates for teaching credentials, which may include, but are not limited to, the following:

(1) Administering the test more frequently.

(2) Increasing the number of testing locations.

(3) Making the exam available year-round by appointment at examination centers that are highly secure and professionally supervised.

(c) The commission shall adopt these improvements in consultation with the Department of Finance and shall report all improvements to the Legislature, no later than January 1, 2003.

SEC. 18. Section 44259.5 of the Education Code is amended to read:

44259.5. (a) By July 1, 2002, the commission shall ensure that an accredited program of professional preparation offered pursuant to paragraph (3) of subdivision (b) of Section 44259 satisfies standards established by the commission for the preparation of teachers for all pupils, including English language learners. The standards shall be based upon an independent job analysis of the essential knowledge, skills, and abilities needed by all classroom teachers to develop English language skills while maintaining academic progress across the curriculum and shall take into account existing standards and test specifications for the Crosscultural, Language and Academic Development certificate. The commission shall ensure that the standards established pursuant to this subdivision are aligned with the requirements of subparagraph (A) of paragraph (4) of subdivision (b) of Section 44259 and Section 60200.4.

(b) To maintain current statutory options for teachers in completing credential requirements, the commission shall provide candidates, including candidates prepared in other states, with an examination route to fulfilling the requirements pursuant to subdivision (a) for essential preparation to teach English language learners. The commission shall

provide for a comprehensive validity study of the examination before implementing this section.

(c) Commencing July 1, 2003, the commission may not issue a preliminary teaching credential to an applicant pursuant to subdivision (b) of Section 44259 unless the applicant has satisfied the standards and requirements established pursuant to subdivision (a) or has an authorization to provide services to English language learners issued pursuant to Section 44253, 44253.1, 44253.2, 44253.3, 44253.4, or 44253.10.

(d) Commencing July 1, 2003, an approved program of beginning teacher induction offered pursuant to paragraph (2) of subdivision (c) of Section 44259 shall satisfy standards established by the commission and the Superintendent of Public Instruction for beginning teacher induction for teachers for all pupils, including English language learners. The commission and the superintendent shall incorporate in these standards the essential knowledge, skills, and abilities needed for first-year and second-year certificated teachers to apply effective instructional strategies that assist pupils to develop English language proficiency while maintaining academic progress across the curriculum. The standards shall be based upon the independent job analysis of the essential knowledge, skills, and abilities for all classroom teachers conducted pursuant to subdivision (a).

(e) Commencing July 1, 2005, the commission may not initially issue a professional clear teaching credential to an applicant pursuant to subdivision (c) of Section 44259 unless the applicant has satisfied the standards and requirements established pursuant to subdivision (d) or has an authorization to provide services to English language learners issued pursuant to Section 44253, 44253.1, 44253.2, 44253.3, 44253.4, or 44253.10.

(f) No provision of this section applies to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make that provision applicable.

(g) A candidate for a teaching credential pursuant to Section 44259 is entitled to earn and receive the credential by fulfilling the standards and requirements for the credential that were in effect when the candidate entered accredited preparation or approved induction for the credential.

(h) By July 1, 2001, the commission shall report to the education policy committees in each house of the Legislature on the new standards it is required to develop pursuant to subdivision (a) and the progress of the implementation of the new standards by accredited programs of professional preparation.

(i) By July 1, 2002, the commission shall report to the education policy committees in each house of the Legislature on the outcomes and

recommendations for the implementation of the validity study required pursuant to subdivision (b).

SEC. 19. Section 44279.2 of the Education Code is amended to read:

44279.2. (a) The superintendent and the commission shall jointly administer the Beginning Teacher Support and Assessment System pursuant to this chapter. In administering this section, the superintendent and the commission shall provide for or contract for all of the following:

(1) Establishment of requirements for reviewing and approving teacher induction programs.

(2) Development and administration of a system for ensuring teacher induction program quality and effectiveness. For the purposes of this section, ''program effectiveness'' means producing excellent program outcomes in relation to the purposes defined in subdivision (b) of Section 44279.1. For the purposes of this section, ''program quality'' means excellence with respect to program factors, including, but not limited to, all of the following:

(A) Program goals.

(B) Design resources.

(C) Management, evaluation, and improvement of the program.

(D) School context and working conditions.

(E) Support and assessment services to each beginning teacher.

(3) Developing purposes and functions for reviewing and approving supplemental grants and standards for program clusters and program consultants, as defined pursuant to Section 44297.7.

(4) Improving and refining the formative assessment system.

(5) Improving and refining professional development materials and strategies for all personnel involved in implementing induction programs.

(6) Conducting and tracking research related to beginning teacher induction.

(7) Periodically evaluating the validity of the California Standards for the Teaching Profession adopted by the commission in January 1997 and the Standards of Quality and Effectiveness for Beginning Teacher Support and Assessment Program adopted by the commission in 1997 and making changes to those documents, as necessary.

(b) As part of the Beginning Teacher Support and Assessment System, the commission and the superintendent shall establish requirements for local teacher induction programs.

(c) A school district or consortium of school districts may apply to the superintendent for funding to establish a local teacher induction program pursuant to this section. From amounts appropriated for the purposes of this section, the superintendent shall allocate three thousand dollars ($3,000) for each beginning teacher participating in the program.

Commencing with the 1998–99 fiscal year and each fiscal year thereafter that amount shall be adjusted by the inflation factor set forth in Section 42238.1. To be eligible to receive funding, a school district or consortium of school districts shall, at a minimum, meet all of the following requirements:

(1) Develop, implement, and evaluate teacher induction programs that meet the Quality and Effectiveness for Beginning Teacher Induction Program Standards adopted by the commission in 1997.

(2) Support beginning teachers in meeting the competencies described in the California Standards for the Teaching Profession, adopted by the commission in January 1997.

(3) Meet criteria for the cost-effective delivery of program services pursuant to subdivision (a) of Section 44279.

(4) From amounts received for the Mentor Teacher Program pursuant to Article 4 (commencing with Section 44490) of Chapter 2, or from other local, state, or resources available for the purposes of teacher induction programs, contribute not less than two thousand dollars ($2,000) for the costs of each beginning teacher served in the induction program.

SEC. 20. Section 44329 of the Education Code is repealed.

SEC. 21. Section 44784 of the Education Code is amended to read:

44784. (a) The institution selected under Section 44782 shall be assisted by an advisory committee, the function of which shall be:

(1) To review and comment on plans for the establishment of the resource centers.

(2) To assist in determining criteria for local and private funding matches to be required for the operation of each resource center.

(3) To advise the project on the selection of proposals for funding.

(b) The advisory committee shall contain the following members:

(1) Ten members appointed by representatives of higher education, two each to be selected by the President of the University of California, the Chancellor of the California State University, the Chancellor of the California Community Colleges, the Association of Independent California Colleges and Universities, and the California Postsecondary Education Commission. At least one of the appointees of each of these appointing entities shall be an elementary or secondary school classroom teacher with classroom experience in international studies instruction.

(2) Four public members with special interest or competence in international affairs, representing business, community, and subject area educational organizations, one each to be selected by the Superintendent of Public Instruction, the Governor, the Speaker of the Assembly, and the Senate Committee on Rules.

(3) Three certificated school teachers, or other educators, with classroom experience in international studies instruction, to be designated by the institution selected to operate the project.

SEC. 22. Section 49413 of the Education Code is amended to read:

49413. (a) The Legislature recognizes the importance of first aid and cardiopulmonary resuscitation training. In enacting this section, it is the intent of the Legislature to encourage school districts and schools, individually or jointly, to develop a program whereby their staff and pupils understand the importance of this training and have an appropriate opportunity to develop these skills.

(b) A school district or school, individually or jointly with another school district or school, may provide a comprehensive program in first aid or cardiopulmonary resuscitation (CPR) training, or both, to pupils and employees. The program shall be developed using the following guidelines:

(1) The school district or school collaborates with existing local resources, including, but not limited to, parent teacher associations, hospitals, school nurses, fire departments, and other local agencies that promote safety, to make first aid or CPR training, or both, available to the pupils and employees of the school district or school.

(2) Each school district that develops a program, or the school district that has jurisdiction over a school that develops a program, compiles a list of resources for first aid or CPR information, to be distributed to all of the schools in the district.

(3) The first aid and CPR training are based on standards that are at least equivalent to the standards currently used by the American Red Cross or the American Heart Association.

SEC. 23. Section 49590.5 of the Education Code is repealed.

SEC. 24. Section 52052 of the Education Code is amended to read:

52052. (a) (1) By July 1, 1999, the Superintendent of Public Instruction, with approval of the State Board of Education, shall develop an Academic Performance Index (API), to measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.

(2) For purposes of this section, a numerically significant ethnic or socioeconomically disadvantaged subgroup is a subgroup that constitutes at least 15 percent of a school's total pupil population and consists of at least 30 pupils. An ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school.

(3) The API shall consist of a variety of indicators currently reported to the State Department of Education including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils who were enrolled in a school district in the prior fiscal year may be included in the test results reported in the API. Results of the achievement test and other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data is currently reported to the state and the accuracy of the data.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test developed pursuant to Section 60604.

(2) The nationally normed test as augmented pursuant to paragraph (1) of subdivision (f) of Section 60644.

(3) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, expected annual percentage growth targets for all schools based on their API baseline score as measured in July 1999. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the State Board of Education pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the State Board of Education may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that

the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically-significant ethnic and socioeconomically disadvantaged subgroups, as defined in subdivision (a) of Section 52052, are making comparable improvement.

(d) Upon adoption of state performance standards by the State Board of Education, the Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target. When fully developed, schools may either meet the state target or meet their growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057.

(e) Beginning in June 2000, the API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f) Only comprehensive high schools, middle schools, and elementary schools that have a population of 100 or more pupils may be included in the API ranking.

(g) By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 pupils, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools, including continuation high schools and independent study schools.

SEC. 25. Section 52656 of the Education Code is amended to read:

52656. (a) Notwithstanding any other provision of law, school districts that received apportionment for extraordinary needs in English as a second language and basic skills from Provision (4) of Schedule (a) of Item 6110-156-001 of the Budget Act of 1991 for the 1991–92 fiscal year shall continue to receive those funds in the school district's adult block entitlement in the 1992–93 fiscal year, and each fiscal year thereafter.

(b) Commencing in the 1993–94 fiscal year, school districts that receive an apportionment from subdivision (a) shall give priority to eligible immigrants in need of courses pursuant to paragraphs (2), (3), and (4) of subdivision (a) of Section 41976 and Section 52653 of the Education Code.

(c) School districts are not restricted by this chapter from providing classes for immigrants pursuant to paragraph (4) of subdivision (a) of

Section 41976 of the Education Code with other funds for adult education that are available to the district.

SEC. 26. Section 54696 of the Education Code is amended to read:

54696. (a) The Superintendent of Public Instruction shall contract for a four-year independent review of the effectiveness of the newly funded California Partnership Academies. Preliminary results shall be reported after the 1994–95 fiscal year and a final evaluation shall be performed after the 1996–97 fiscal year. The independent review shall include, but not be limited to, all of the following:

(1) An analysis of the extent and degree of success of business and industry involvement, including in-kind contributions, mentor services, summer jobs, and assistance in job placement.

(2) The number of students obtaining employment, entering advanced training programs, and enrolling in postsecondary institutions after graduation.

(3) Attendance rates and credits achieved.

(4) The number of students completing their high school education and graduating.

(5) An analysis of the extent to which components of the partnership program have been incorporated into the regular program of the school.

(b) The Legislature finds that each new academy requires technical assistance for the academy team, administrators, teachers, and private sector participants in the multiple aspects of the academy program that differ from the standard high school program. To provide for the transfer of the experiences gained in the operation of currently successful academies to new academies, the Superintendent of Public Instruction shall develop a technical assistance team whose members have prior involvement in successful academy operation and make their expertise available, as necessary, to each new academy during its first two years of operation.

SEC. 27. Section 56885 of the Education Code is amended to read:

56885. The Department of Finance shall, after consultation with appropriate state agencies, ascertain the amounts of funds, if any, that should be transferred between state agencies in order to achieve the purposes of the bill.

Any savings that may occur to any program due to maximized use of federal funds or services to individuals with exceptional needs as provided in this article shall be utilized to defer projected increased costs to meet full mandates of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

SEC. 28. Section 58523 of the Education Code is amended to read:

58523. The governing board of a school district receiving a grant pursuant to this chapter shall establish a single gender academy as a magnet school pursuant to its general power established under Section

35160 or as an alternative education magnet school pursuant to Chapter 3 (commencing with Section 58500).

SEC. 29. Section 58922 of the Education Code is repealed.

SEC. 30. Section 60810 of the Education Code is amended to read:

60810. (a) (1) The Superintendent of Public Instruction shall review existing tests that assess the English language development of pupils whose primary language is a language other than English. The tests shall include, but not be limited to, an assessment of achievement of these pupils in English reading, speaking, and written skills. The superintendent shall determine which tests, if any, meet the requirements of subdivisions (b) and (c).

(2) If no suitable test exists, the superintendent shall explore the option of a collaborative effort with other states to develop a test or series of tests and share test development costs. If no suitable test exists, the superintendent, with approval of the State Board of Education, may contract with a local education agency to develop a test or series of tests that meets the criteria of subdivisions (b) and (c) or may contract to modify an existing test or series of tests so that it will meet the requirements of subdivisions (b) and (c).

(3) Not later than August 15, 1999, the Superintendent of Public Instruction and the State Board of Education shall release a request for proposals for the development of the test or series of tests required by this subdivision. Not later than September 15, 1999, the State Board of Education shall select a contractor or contractors for the development of the test or series of tests required by this subdivision, to be available for administration during the 2000–01 school year.

(b) The test or series of tests developed or acquired pursuant to subdivision (a) shall have sufficient range to assess pupils in kindergarten and grades 1 to 12, inclusive, in English reading, speaking, and written skills, except that pupils in kindergarten and grade 1 shall be assessed in reading and written communication only to the extent that comparable standards and assessments in English and language arts are used for native speakers of English.

(c) The test or series of tests shall meet all of the following requirements:

(1) Provide sufficient information about pupils at each grade level to determine levels of proficiency ranging from no English proficiency to fluent English proficiency with at least two intermediate levels.

(2) Have psychometric properties of reliability and validity deemed adequate by technical experts.

(3) Be capable of administration to pupils with any primary language other than English.

(4) Be capable of administration by classroom teachers.

(5) Yield scores that allow comparison of a pupil's growth over time, can be tied to readiness for various instructional options, and can be aggregated for use in the evaluation of program effectiveness.

(6) Not discriminate on the basis of race, ethnicity, or gender.

(7) Be aligned with the standards for English language development adopted by the State Board of Education pursuant to Section 60811.

(d) The test shall be used for the following purposes:

(1) To identify pupils who are limited English proficient.

(2) To determine the level of English language proficiency of pupils who are limited English proficient.

(3) To assess the progress of limited-English-proficient pupils in acquiring the skills of listening, reading, speaking, and writing in English.

SEC. 31. Section 66015 of the Education Code is amended to read:

66015. It is the intent of the Governor and the Legislature, in cooperation with the Trustees of the California State University, to do both of the following:

(a) Place a major priority on resolving the serious problem of impacted and overcrowded classes, not only with respect to the California State University, but throughout public postsecondary education.

(b) Ensure that needy students receive financial aid sufficient to cover the cost of fee increases for each academic year.

SEC. 31.5. Section 66755 of the Education Code is amended to read:

66755. (a) The California Community Colleges, the California State University, and the University of California shall evaluate the impact of the program established by this chapter, and shall report to the California Postsecondary Education Commission on or before June 30, 2002, on student use, revenue implications, and other issues that may be identified to judge satisfactorily the program's efficiency and determine whether it should be established permanently.

(b) The California Postsecondary Education Commission shall prepare a report based on the information received from the segments pursuant to subdivision (a) and, notwithstanding Section 7550.5 of the Government Code, shall present the report, with recommendations, to the Governor and the Legislature on or before December 1, 2002. If, in the determination of the commission, the program established by this chapter appears to be underutilized, the report shall include the comments of the commission with respect to the reasons for the underutilization and options for increasing participation in the program.

SEC. 32. Section 66293 of the Education Code is repealed.

SEC. 33. Section 67301 of the Education Code is amended to read:

67301. (a) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, and the Regents of the University of California may, adopt rules and regulations prescribing requirements similar to those provided by Section 22511.5 of the Vehicle Code and all other applicable sections of the Vehicle Code relating to parking exemptions for disabled persons, as defined by Section 295.5 of the Vehicle Code, and disabled veterans, as defined by Section 295.7 of the Vehicle Code. The rules and regulations shall include authorization to park for unlimited periods in time-restricted parking zones and to park in any metered parking space without being required to pay any parking meter fee or to display a parking permit other than pursuant to Section 5007 or 22511.55 of the Vehicle Code, provided those spaces are otherwise available for use by the general public. The adopted regulations shall authorize parking at campus facilities and grounds by students with disabilities and by persons providing transportation services to students with disabilities. Except as otherwise provided in this section, students with disabilities and persons providing transportation to students with disabilities shall be required to display a valid parking permit, if applicable, for the campus attended. Nothing in this section prohibits the adoption of rules and regulations providing greater accessibility for students with disabilities and persons providing transportation services to those students.

The adopted rules and regulations shall exempt students with disabilities and persons providing transportation services to these persons from any applicable parking restrictions in areas including, but not limited to, metered parking spaces and parking facilities designated for use by students, faculty, administrators, and employees.

(b) The Regents of the University of California may provide, and the Trustees of the California State University shall provide, and the Board of Governors of the California Community Colleges shall adopt rules and regulations requiring the governing board of each community college district to provide, visitor parking at each campus of the university or district at no charge for a disabled person, as defined by Section 295.5 of the Vehicle Code, or disabled veteran, as defined by Section 295.7 of the Vehicle Code, or as defined by each segment's policy concerning the provision of services to students with disabilities, whichever is more inclusive, and for persons providing transportation services to individuals with disabilities. Whenever parking designated for a disabled person is provided on any campus of the University of California, the California State University, or a community college district in a facility controlled by a mechanical gate, that university or district shall also provide accommodations for any person whose disability prevents him or her from operating the gate controls. These

accommodations may be provided by making arrangements for disabled persons to be assisted in the operation of the gate controls, or through other effective and reasonable means the university or district may devise. Nothing in this subdivision shall be construed to require the replacement or elimination of special parking facilities restricted for the use of disabled persons located on the campuses of these universities or districts.

It is the intent of the Legislature that community college districts shall utilize the proceeds from parking fees charged to community college students and employees to offset costs incurred by these districts in accommodating disabled persons pursuant to the requirements of this section.

(c) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, and the Regents of the University of California may, establish procedures for the purpose of conducting biennial audits to determine whether individual campuses are in compliance with all state building code requirements relating to the location and the designation of minimum percentages of available campus parking spaces for use by students with disabilities, as determined by guidelines of Section 14679 of the Government Code, Section 2-7102 of Title 24 of the California Code of Regulations, Part 40 (commencing with Section 40.1) of Title 24 of the Code of Federal Regulations, Section 1190.31 of Title 36 of the Code of Federal Regulations, or their successor provisions, or any other applicable provisions of law, whichever provides the greater accessibility for disabled persons.

SEC. 34. Section 67359.20 of the Education Code is amended to read:

67359.20. Any funds from the 1988 Higher Education Capital Outlay Bond Fund, the June 1990 Higher Education Capital Outlay Bond Fund, and the 1992 Higher Education Capital Outlay Bond Fund, not to exceed a combined total of seventy-five million dollars ($75,000,000), are hereby appropriated to the Director of Finance for allocation to the University of California, the California State University, and the California Community Colleges to meet the timely allocation of matching grants to repair, replace, reconstruct, renovate, or retrofit on-campus buildings or facilities, including utilities, and streets and roads that were damaged in the Northridge earthquake of January 17, 1994.

SEC. 35. Section 69733 of the Education Code is repealed.

SEC. 36. Section 71028 of the Education Code is amended to read:

71028. The board of governors shall adopt regulations to ensure that the California Community Colleges, as a system, establish and apply the statewide participation goals for contracting with minority business

enterprises and women business enterprises specified in Section 10115 of the Public Contract Code. The statewide participation goal for the California Community Colleges shall be based upon the total dollar amount of contracts awarded, with not less than 15 percent being awarded to minority business enterprises, and not less than 5 percent being awarded to women business enterprises. The regulations adopted by the board of governors shall be adapted from and consistent with the provisions of Article 1.5 (commencing with Section 10115) of Chapter 1 of Part 1 of the Public Contract Code.

SEC. 37. Section 72681 of the Education Code is repealed.

SEC. 38. Section 78217 of the Education Code is repealed.

SEC. 39. Section 87104 of the Education Code is amended to read:

87104. (a) The Board of Governors of the California Community Colleges, out of funds appropriated for these purposes, (1) shall provide assistance to local community colleges in adopting and maintaining high-quality affirmative action programs; (2) develop and disseminate to public community college districts guidelines to assist these agencies in developing and implementing affirmative action employment programs; and (3) shall establish a technical assistance team to review the affirmative action plan of each community college district which fails to make measurable progress in meeting the goals and timetables of its adopted plan. The technical assistance team shall recommend appropriate actions to assure reasonable progress in improving success rates. The board of governors shall prescribe those conditions necessary to assure reasonable progress and otherwise meet the legal requirements of affirmative action. The conditions may include the withholding of allowances made pursuant to Sections 87482.6 and 87107.

(b) The board of governors shall establish, by July 1, 1989, within the chancellor's office or through other means as deemed necessary, a major service function to assist community college districts in identifying, locating, and recruiting qualified members of underrepresented groups, and in establishing and maintaining effective affirmative action hiring procedures.

(c) The board of governors shall, by March 15, 1989, develop and adopt a systemwide plan for strengthening faculty and staff affirmative action policies and programs in the California Community Colleges.

SEC. 40. Section 89753 of the Education Code is amended to read:

89753. All appropriations for the support of the California State University and the trustees shall be subject to Section 13320 of the Government Code and applicable Budget Act restrictions, with the following exceptions:

(a) The trustees may, with regard to funds appropriated for the support of the California State University, approve any transfer of funds between general fund appropriations, unless restricted by the Budget Act or any

other act, and within and between any category designated in any schedule set forth for the appropriation. In addition, the trustees may authorize the augmentation of the amount available for a category designated in any schedule set forth for the appropriation by transfer from any of the other designated categories, including additional reimbursements and amounts receivable within the same schedule, and shall furnish the Joint Legislative Budget Committee and appropriate legislative fiscal committees a report of the authorizations given during the preceding quarter.

(b) The trustees may approve travel, both within and outside the state, and the payment of allowances and expenses related to travel, moving, and the relocation of employees in accordance with the allowances established by the trustees.

(c) The trustees may, within funds appropriated for the support of the California State University, establish new positions and make changes in existing positions and the position payroll roster.

SEC. 41. Section 89761 of the Education Code is amended to read:

89761. (a) The California State University shall adhere to uniform accounting standards in accordance with Generally Accepted Accounting Principles (GAAP) for institutions of higher education.

(b) In the 1993–94 fiscal year, the California State University on five campuses representing the diversity of the system in both size of student body and campus budget shall have an independent audit of all funds performed and an independent audit report prepared.

(c) A copy of the audit reports shall be available for public inspection in the library of each campus of the university.

(d) The costs associated with the annual independent audit and audits performed pursuant to Section 89045 shall be funded from existing resources.

SEC. 42. Section 99105 of the Education Code is repealed.

SEC. 43. Section 99306 of the Education Code is amended to read:

99306. The State Department of Education shall create an evaluation design for the Student Academic Partnership Program. School districts that receive grants under this chapter shall use this evaluation design to assess the effectiveness of their programs. These school districts shall transmit their assessments to the department.

SEC. 44. Section 7571 of the Family Code is amended to read:

7571. (a) On and after January 1, 1995, upon the event of a live birth, prior to an unmarried mother leaving any hospital, the person responsible for registering live births under Section 102405 of the Health and Safety Code shall provide to the natural mother and shall attempt to provide, at the place of birth, to the man identified by the natural mother as the natural father, a voluntary declaration of paternity together with the written materials described in Section 7572. Staff in the

hospital shall witness the signatures of parents signing a voluntary declaration of paternity and shall forward the signed declaration to the Department of Child Support Services within 20 days of the date the declaration was signed. A copy of the declaration shall be made available to each of the attesting parents.

(b) No health care provider shall be subject to any civil, criminal, or administrative liability for any negligent act or omission relative to the accuracy of the information provided, or for filing the declaration with the appropriate state or local agencies.

(c) The local child support agency shall pay the sum of ten dollars ($10) to birthing hospitals and other entities that provide prenatal services for each completed declaration of paternity that is filed with the Department of Child Support Services, provided that the local child support agency and the hospital or other entity providing prenatal services has entered into a written agreement that specifies the terms and conditions for the payment as required by federal law.

(d) If the declaration is not registered by the person responsible for registering live births at the hospital, it may be completed by the attesting parents, notarized, and mailed to the Department of Child Support Services at any time after the child's birth.

(e) Prenatal clinics shall offer prospective parents the opportunity to sign a voluntary declaration of paternity. In order to be paid for their services as provided in subdivision (c), prenatal clinics must ensure that the form is witnessed and forwarded to the Department of Child Support Services within 20 days of the date the declaration was signed.

(f) Declarations shall be made available without charge at all local child support agency offices, offices of local registrars of births and deaths, courts, and county welfare departments within this state. Staff in these offices shall witness the signatures of parents wishing to sign a voluntary declaration of paternity and shall be responsible for forwarding the signed declaration to the Department of Child Support Services within 20 days of the date the declaration was signed.

(g) The Department of Child Support Services, at its option, may pay the sum of ten dollars ($10) to local registrars of births and deaths, county welfare departments, or courts for each completed declaration of paternity that is witnessed by staff in these offices and filed with the Department of Child Support Services. In order to receive payment, the Department of Child Support Services and the entity shall enter into a written agreement that specifies the terms and conditions for payment as required by federal law.

(h) The Department of Child Support Services and local child support agencies shall publicize the availability of the declarations. The local child support agency shall make the declaration, together with the written materials described in subdivision (a) of Section 7572, available

upon request to any parent and any agency or organization that is required to offer parents the opportunity to sign a voluntary declaration of paternity. The local child support agency shall also provide qualified staff to answer parents' questions regarding the declaration and the process of establishing paternity.

(i) Copies of the declaration filed with the Department of Child Support Services shall be made available only to the parents, the child, the local child support agency, the county welfare department, the county counsel, the Department of Child Support Services, and the courts.

(j) Publicly funded or licensed health clinics, pediatric offices, Head Start programs, child care centers, social services providers, prisons, and schools may offer parents the opportunity to sign a voluntary declaration of paternity. In order to be paid for their services as provided in subdivision (c), publicly funded or licensed health clinics, pediatric offices, Head Start programs, child care centers, social services providers, prisons, and schools shall ensure that the form is witnessed and forwarded to the Department of Child Support Services.

(k) Any agency or organization required to offer parents the opportunity to sign a voluntary declaration of paternity shall also identify parents who are willing to sign, but were unavailable when the child was born. The organization shall then contact these parents within 10 days and again offer the parent the opportunity to sign a voluntary declaration of paternity.

SEC. 45. Section 256 of the Financial Code is repealed.

SEC. 46. Section 8052 of the Financial Code is repealed.

SEC. 47. Section 32955 of the Financial Code is repealed.

SEC. 48. Section 1000.5 of the Fish and Game Code is amended to read:

1000.5. (a) The department shall prepare and submit periodic reports to the Governor and the Legislature on the status of selected freshwater fisheries and the status of selected ocean fisheries, which may include, but are not limited to, graphs of historical population trends, potential problems facing each discussed species, the effects that toxics in the environment are having on those species, any problems relating to disease, and any other considerations the department believes to be relevant to policy determinations affecting those fisheries.

(b) The reports shall be prepared and submitted to the Governor and to the Legislature at least every two years, not later than January 1.

(c) The report to the Legislature shall be referred to the Joint Committee on Fisheries and Aquaculture and to the respective policy committee in each house which considers matters relating to fish and game.

(d) The department shall prepare the reports within its existing financial and personnel resources.

SEC. 49. Section 1796 of the Fish and Game Code is amended to read:

1796. No bank site shall be qualified under Section 1785 on or after January 1, 2010.

SEC. 50. Section 2079 of the Fish and Game Code is amended to read:

2079. The department shall, by January 30 of every third year, beginning January 30, 1986, prepare a report summarizing the status of all state listed endangered, threatened, and candidate species, and shall submit the report to the commission, the Legislature, the Governor, and all individuals who have notified the commission, in writing with their address, of their interest. This report shall include, but not be limited to, a listing of those species designated as endangered, threatened, and candidate species, a discussion of the current status of endangered, threatened, or candidate species, and the timeframes for the review of listed species pursuant to this article.

SEC. 51. Section 2099 of the Fish and Game Code is repealed.

SEC. 52. Section 2645 of the Fish and Game Code is amended to read:

2645. All proposed appropriations for the program shall be included in a section in the Budget Bill for the 1984–85 fiscal year and each succeeding fiscal year for consideration by the Legislature and shall bear the caption ''Fish and Wildlife Habitat Enhancement Program.'' The section shall contain separate items for each project, each class of projects, or each element of the program for which an appropriation is made.

All appropriations shall be subject to all limitations enacted in the Budget Act and to all fiscal procedures prescribed by law with respect to the expenditure of state funds unless expressly exempted from such laws by a statute enacted by the Legislature. The section in the Budget Act shall contain proposed appropriations only for the program elements and classes of projects contemplated by this chapter, and no funds derived from the bonds authorized by this chapter may be expended pursuant to an appropriation not contained in that section of the Budget Act.

SEC. 53. Section 3409 of the Fish and Game Code is amended to read:

3409. The department shall report every three years on the wildlife habitat enhancement and management program conducted pursuant to this article. The report shall include a listing of landholders participating in the wildlife habitat enhancement and management program, the wildlife habitat enhancement and management activities undertaken, the

wildlife species managed, and harvest data. The report shall be submitted to the Speaker of the Assembly, the Chairperson of the Senate Committee on Rules, and the chairpersons of the policy committees in each house that have jurisdiction over the subject of this article. The report shall also be made available to the public upon request.

SEC. 54. Section 3951 of the Fish and Game Code is amended to read:

3951. The commission may authorize the taking of tule elk pursuant to Section 332. The department shall relocate tule elk in areas suitable to them in the State of California and shall cooperate to the maximum extent possible with federal and local agencies and private property owners in relocating tule elk in suitable areas under their jurisdiction or ownership. When economic or environmental damage occurs, emphasis shall be placed on managing each tule elk herd at a biologically sound level through the use of relocation, sporthunting, or other appropriate means as determined by the department after consulting with local landowners.

The number of tule elk in the Owens Valley shall not be permitted to increase beyond 490, or any greater number hereafter determined by the department to be the Owens Valley's holding capacity in accordance with game management principles. Within 180 days of the enactment of the bill which amended this section at the 1987 portion of the 1987–88 Regular Session of the Legislature, the department shall complete management plans for high priority areas, including, but not limited to, Potter Valley and Mendocino County. The plans shall include, but not be limited to:

(a) Definition of the boundaries of the management area.

(b) Characteristics of the tule elk herds within the management area.

(c) The habitat conditions and trends within the management area.

(d) Major factors affecting the tule elk population within the management area, including, but not limited to, conflicts with other land uses.

(e) Management activities necessary to achieve the goals of the plan.

SEC. 55. Section 4904 of the Fish and Game Code is amended to read:

4904. (a) The department shall biennially report the following to the Legislature:

(1) The management units for which plans have been developed pursuant to Section 4901.

(2) A summary of the data from the annual count conducted by the department for the purposes of subdivision (b) of Section 4902.

(3) The number of license tags issued in the preceding season, and the number of mature Nelson bighorn rams taken under valid license tags in the preceding season.

(4) Any instance known to the department of the unlawful or unlicensed taking of a bighorn sheep in this state and the disposition of any prosecution therefor.

(5) The number of bighorn sheep relocated during the previous year, the area where reintroduced, a statement on the success of the reintroduction, and a brief description of any reintroduction planned for the following year.

(b) The report which is due in 1991 shall be presented to the Legislature on or before July 1, 1991, and shall consist of a compilation of the results of the ongoing study conducted pursuant to this section each year since the enactment of this chapter and an assessment of the environmental impact of the hunting of Nelson bighorn sheep on the herds.

SEC. 56. Section 6450 of the Fish and Game Code is amended to read:

6450. The department shall adopt regulations that provide for the control of aquatic plant pests using artificially introduced triploid grass carp under a permit issued by the department. The regulations shall do all of the following:

(a) Restrict triploid grass carp introductions to those triploid grass carp that have been rendered sterile immediately after the eggs have been fertilized.

(b) Require individual fish to be checked to ensure that a third, triploid, set of chromosomes has been retained, preventing further reproduction by that individual fish.

(c) Limit aquatic plant pest control programs using triploid grass carp to the use of sterile triploid grass carp with documented certification of triploidy to ensure sterility.

(d) Require the identification by tagging of individual fish as the property of each owner.

(e) Require the posting of notices at stocked bodies of water declaring the penalties for removing triploid grass carp.

(f) Limit the permits for the use of triploid grass carp in waters on golf courses located in residential areas to those waters that are determined by the department to be secure from the removal of triploid grass carp to unauthorized waters.

(g) Provide for management of the triploid grass carp populations in a manner consistent with the provisions of this code where the department finds that such actions will benefit the long-term health of the state's biodiversity as a whole.

(h) Until January 1, 1999, the regulations shall not authorize the issuance of permits for the use of triploid grass carp in waters located within condominium areas of any residential area for which a permit may not be issued pursuant to subdivision (f) except at three locations

within the area authorized pursuant to this subdivision. The three locations shall be selected by the department in consultation with the Imperial Irrigation District. The limitation to three locations is necessary to enable monitoring of human-induced movement of triploid grass carp to unauthorized waters and to permit the evaluation of the impact of the experiment.

SEC. 57. Section 6459 of the Fish and Game Code is repealed.

SEC. 58. Section 6599 of the Fish and Game Code is amended to read:

6599. (a) On or before December 31 of each year, the director shall prepare and submit a report to the Legislature and the Legislative Analyst regarding the effectiveness of the program.

(b) 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. 59. Section 16533 of the Fish and Game Code is repealed.

SEC. 60. Section 4101.5 of the Food and Agricultural Code is repealed.

SEC. 61. Section 13127.93 of the Food and Agricultural Code is repealed.

SEC. 62. Section 13135 of the Food and Agricultural Code is amended to read:

13135. The department and the State Department of Health Services shall jointly review the existing federal and state pesticide registration and food safety system and determine if the existing programs adequately protect infants and children from dietary exposure to pesticide residues. The review shall commence as early as possible in 1990, so that any policy or administrative adjustments determined to be necessary as a result of the joint review can be made on a timely basis. The department shall consult with the University of California and other qualified public and private entities in conducting the joint review. The joint review shall continue for a sufficient time in order to evaluate the report of infant exposure to pesticide residues, which is presently being undertaken by the National Academy of Sciences. Within six months of the official release of the National Academy of Sciences' study, the department shall finalize a report describing the evaluation that was conducted pursuant to this section, including any recommendations for modification of the existing regulatory system in order to adequately protect infants and children.

SEC. 63. Section 14104 of the Food and Agricultural Code is repealed.

SEC. 64. Section 76906 of the Food and Agricultural Code is amended to read:

76906. (a) All money that is collected by the director pursuant to this chapter shall be deposited in any bank, or other depository that is approved by the Director of Finance, allocated to the purposes of this chapter only, and disbursed by the director or the council only for the necessary expenses that are incurred by the council and the director in carrying out the purposes and provisions of this chapter, including expenses generated by the auditing requirement contained in this section. Money that is so collected shall be deposited and disbursed in conformity with appropriate auditing regulations which are prescribed by the director. The expenditure of the money is exempt from Section 925.6 and 16304 of the Government Code.

(b) All expenditures by the council and the director shall be audited at least once every two years by one of the following means:

(1) By contract with a certified public account.

(2) By contract with a public accountant holding a valid permit issued by the California Board of Accountancy.

(3) By contract with a public accounting firm.

(4) By agreement with the Department of Finance.

SEC. 70. Section 3114 of the Government Code is amended to read:

3114. The office shall be administered by a director who shall be appointed by and report to, the Governor.

SEC. 71. Section 7585 of the Government Code is amended to read:

7585. (a) Whenever any department or any local agency designated by that department fails to provide a related service or designated instruction and service required pursuant to Section 7575 or 7576, and specified in the child's individualized education program, the parent, adult pupil, or any local education agency referred to in this chapter, shall submit a written notification of the failure to provide the service to the Superintendent of Public Instruction or the Secretary of Health and Welfare.

(b) When either the Superintendent of Public Instruction or the Secretary of Health and Welfare receives a written notification of the failure to provide a service as specified in subdivision (a), a copy shall immediately be transmitted to the other party. The superintendent, or his or her designee, and the secretary, or his or her designee, shall meet to resolve the issue within 15 calendar days of receipt of the notification. A written copy of the meeting resolution shall be mailed to the parent, the local education agency, and affected departments, within 10 days of the meeting.

(c) If the issue cannot be resolved within 15 calendar days to the satisfaction of the superintendent and the secretary, they shall jointly submit the issue in writing to the Director of the Office of Administrative Hearings, or his or her designee, in the State Department of General Services.

(d) The Director of the Office of Administrative Hearings, or his or her designee, shall review the issue and submit his or her findings in the case to the superintendent and the secretary within 30 calendar days of receipt of the case. The decision of the Director of the Office of Administrative Hearings, or his or her designee, shall be binding on the departments and their designated agencies who are parties to the dispute.

(e) If the meeting, conducted pursuant to subdivision (b), fails to resolve the issue to the satisfaction of the parent or local education agency, either party may appeal to the Director of the Office of Administrative Hearings, whose decision shall be the final administrative determination and binding on all parties.

(f) Whenever notification is filed pursuant to subdivision (a), the pupil affected by the dispute shall be provided with the appropriate related service or designated instruction and service pending resolution of the dispute, if the pupil had been receiving the service. The Superintendent of Public Instruction and the Secretary of Health and Welfare shall ensure that funds are available for provision of the service pending resolution of the issue pursuant to subdivision (e).

(g) Nothing in this section prevents a parent or adult pupil from filing for a due process hearing under Section 7586.

(h) The contract between the State Department of Education and the Office of Administrative Hearings for conducting due process hearings shall include payment for services rendered by the Office of Administrative Hearings which are required by this section.

SEC. 73. Section 8654.1 of the Government Code is amended to read:

8654.1. (a) The Legislature finds and declares that financial assistance is essential to meet disaster-related necessary expenses of the state and local governments and the serious needs of individuals or families affected by the Northridge earthquake which occurred January 17, 1994. The Legislature further finds and declares that the federal government will advance to the state, and will authorize local entities to advance from specified federal funds made available to them, the nonfederal share of the costs of this financial assistance.

(b) In order to implement the advance of the nonfederal share from federal funds, in accordance with subdivision (a), the Director of Finance may enter into agreements for the acceptance of these advances, subject to the following:

(1) Funds may be obtained directly from agencies of the federal government or from funds provided to local agencies by the federal government.

(2) Advances may be accepted beginning in the 1994–95 fiscal year, and in no event later than the 1997–98 fiscal year.

(3) The cumulative amount of advances accepted shall not exceed three hundred million dollars ($300,000,000), unless additional amounts are authorized subject to the 30-day notification of the Joint Legislative Budget Committee under Section 28 of the 1994 Budget Act and any substantially similar provision of subsequent budget acts. The state shall accept as advances only so much as may be needed to pay the expenses incurred herein and as may be repaid, consistent with this section, in a short period of time, having due regard for the current financial obligations of the state.

(4) Funds received by the state shall be deposited in the Special Deposit Fund, subject to Article 2 (commencing with Section 16370) of Chapter 2 of Part 2 of Division 4, and may be expended, allocated, or transferred, upon order of the Department of Finance, only to meet the nonfederal share of disaster assistance costs incurred by state or local agencies as a result of the Northridge earthquake.

(5) Funds received under this section, together with interest at a rate agreed upon by the state and federal or local agencies involved, shall be repaid, upon order of the Director of Finance, to the federal government or advancing local agency, from the General Fund as soon as the state is able to do so, but in no event shall any advance remain outstanding after July 31, 1997. The state shall repay no less than one-third of the funds advanced in each of the 1995–96, 1996–97 and 1997–98 fiscal years.

SEC. 74. Section 8670.55 of the Government Code is amended to read:

8670.55. (a) The committee shall provide recommendations to the administrator, the State Lands Commission, the California Coastal Commission, and the State Interagency Oil Spill Committee, on any provision of this chapter including the promulgation of all rules, regulations, guidelines, and policies.

(b) The committee may, at its own discretion, study, comment on, or evaluate, any aspect of oil spill prevention and response in the state. To the greatest extent possible, these studies shall be coordinated with studies being done by the federal government, the administrator, the State Lands Commission, the State Water Resources Control Board, and other appropriate state and international entities. Duplication with the efforts of other entities shall be minimized.

(c) The committee may attend any drills called pursuant to Section 8601.10 or any oil spills, if practicable.

(d) The committee shall report biennially to the Governor and the Legislature on their evaluation of oil spill response and preparedness programs within the state annually and may prepare and send any additional reports they determine to be appropriate to the Governor and the Legislature.

SEC. 74.1. Section 8855.5 of the Government Code is repealed.

SEC. 74.2. Section 8855.7 of the Government Code is repealed.

SEC. 74.3. Section 8855.8 of the Government Code is repealed.

SEC. 75. Section 8879.3 of the Government Code is amended to read:

8879.3. The Seismic Retrofit Bond Fund of 1996 is hereby created in the State Treasury. The proceeds of bonds issued and sold pursuant to this chapter for the purposes specified in this chapter are hereby appropriated, without regard to fiscal years, to the Department of Finance for allocation in the following manner:

(a) Two billion dollars ($2,000,000,000) for the seismic retrofit of state-owned highways and bridges, including toll bridges, throughout the state. Funds allocated by the California Transportation Commission for this purpose shall be deposited in the 1996 Seismic Retrofit Account, which is hereby created in the fund, and, upon deposit, are continuously appropriated to the Department of Transportation. Funds may be used to match any available federal funds for transportation purposes or may be used without matching federal funds to reconstruct, replace, or retrofit state-owned highways and bridges, including toll bridges.

(b) Funds described in this section shall be spent exclusively for the seismic retrofit of state-owned toll bridges in an amount equal to six hundred fifty million dollars ($650,000,000).

(c) The funds in the 1996 Seismic Retrofit Account are available for borrowing only for cash-flow purposes of the State Highway Account, and the funds borrowed shall be repaid to the account within one year. In addition, the proceeds of the bonds sold shall be used to reimburse the State Highway Account and the Consolidated Toll Bridge Fund for Phase Two retrofit expenditures incurred in the 1994–95 and 1995–96 fiscal years.

SEC. 76. Section 10242.5 of the Government Code is amended to read:

10242.5. (a) The Legislative Counsel shall prepare and publish annually a report that lists all reports that state and local agencies are required or requested by law to prepare and file with the Governor or the Legislature, or both, in the future or within the preceding year. The list shall include all of the following information:

(1) The name of the agency that is required or requested to prepare and file the report.

(2) A brief description of the subject of the report.

(3) The date on which the report is to be completed and filed.

(4) The date on which the report was completed and filed.

(b) Each report by the Legislative Counsel prepared pursuant to subdivision (a) shall be sent to each Member of the Legislature and shall

be available to the public. The Legislative Counsel may charge a fee that does not exceed the direct cost of printing the report.

(c) Each state and local agency that is required or requested by law to prepare a report described in subdivision (a) shall file a copy of the report with the Legislative Counsel.

(d) As used in this section:

(1) ''Agency'' includes any city, county, special district, department, board, bureau, or commission, including any task force or other similar body that is created by statute or resolution. ''Agency'' does not include the University of California.

(2) ''Report'' includes any study or audit.

SEC. 77. Section 10601 of the Government Code is amended to read:

10601. The Joint Legislative Retirement Committee is hereby created. The committee shall study and review the benefits, programs, actuarial condition, practices, investments and procedures of, and all legislation relating to the retirement systems for public officers and employees in this state and the trends and developments in the field of retirement. The committee has a continuing existence and may meet, act, and conduct its business at any place within this state during the sessions of the Legislature or any recess thereof, and in the interim period between sessions. A copy of each bill which affects any public employee retirement system shall be transmitted to the committee.

SEC. 77.5. Section 11007 of the Government Code is amended to read:

11007. Except as expressly authorized by law or as specifically authorized by the Director of General Services, property belonging to the state shall not be insured against risk of damage or destruction by fire, and the policies of fire insurance upon any property belonging to the state shall not be renewed. This section is not applicable to the State Compensation Insurance Fund nor to property owned by it.

Insurance authorized by this section shall be procured utilizing insurance procurement procedures approved by the Director of General Services.

SEC. 78. Section 11815 of the Government Code is repealed.

SEC. 79. Section 11818 of the Government Code is repealed.

SEC. 80. Section 12095.60 of the Government Code is repealed.

SEC. 81. Section 13332.06 of the Government Code is repealed.

SEC. 82. Section 13336.5 of the Government Code is repealed.

SEC. 83. Section 14035.6 of the Government Code is repealed.

SEC. 84. Section 14070.2 of the Government Code is amended to read:

14070.2. (a) If authorized by the secretary, the department may, through an interagency agreement, transfer to a joint powers board, and

the board may assume, all responsibility for administering passenger rail service in the corridor. Upon the date specified in the agreement, the board shall succeed to the department's powers and duties relative to that service, except that the department shall retain responsibility for developing budget requests for the service through the state budget process, which shall be developed in consultation with the board, and for coordinating service in the corridor with other passenger rail services in the state.

(b) The interagency agreement shall be executed on or before December 31, 1996.

(c) The secretary shall require the board to demonstrate the ability to meet the performance standards established by the secretary pursuant to subdivision (f) of Section 14031.8.

SEC. 86. Section 14660.1 of the Government Code is amended to read:

14660.1. (a) Notwithstanding subdivision (b) of Section 14669, the Director of General Services, on behalf of the state, may enter into an agreement to convert an existing lease or leases for real property located in the City of Sacramento into a lease-purchase agreement for the purpose of acquiring office and parking facilities, and any other improvements, betterments, and facilities related thereto to provide office space for any state agency. The total purchase price, excluding financing costs, shall not exceed the market value as determined by the Department of General Services. The state may incur costs of financing, including, but not limited to, interest during acquisition of these facilities, interest payable on any interim loan from the Pooled Money Investment Account pursuant to Section 16312 or 16313, a reasonably required reserve fund, and the costs of issuance of interim financing or permanent financing, planning funds, and funds for environmental documents that may be necessary for acquisition of these facilities.

(b) The Director of General Services may proceed with acquisition pursuant to subdivision (a) if the total cost through ownership based on an analysis of savings to the state over a period commensurate with the useful life of the building, including the factoring in of the cost of the building, is determined to be of significant savings to the state.

(c) Revenue bonds, negotiable notes, and negotiable bond anticipation notes may be issued by the State Public Works Board pursuant to the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800)), to finance the acquisition of an office building and parking facilities, and any other improvements, betterments, and facilities related thereto, as specified in subdivision (a).

(d) The amount of the revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the cost of acquisition and related costs, including financing, of the complex and facilities.

(e) The amount of negotiable bond anticipation notes sold shall not exceed the amount of revenue bonds and negotiable notes authorized by this section. Any augmentation of the approved project costs shall be subject to Section 13332.11. The board may borrow funds for project costs from the Pooled Money Investment Account pursuant to Section 16312 or 16313.

(f) The Director of General Services may lease the complex and facilities financed with the proceeds of the revenue bonds, negotiable notes, or negotiable bond anticipation notes from the board pursuant to this section for use by any state agency.

(g) The Director of General Services shall not utilize this section for more than one project as outlined in the report provided for in subdivision (b). Any other agreements shall be entered into as otherwise provided for in this article.

SEC. 89. Section 15277 of the Government Code is amended to read:

15277. There is hereby established within the department a Division of Telecommunications. The division shall include a policy and planning unit whose duties shall include, but not be limited to, all of the following:

(a) Assessing the overall long-range telecommunications needs and requirements of the state considering both routine and emergency operations, performance, cost, state-of-the-art technology, multiuser availability, security, reliability, and such other factors deemed to be important to state needs and requirements.

(b) Developing strategic and tactical policies and plans for telecommunications with consideration for the systems and requirements of state agencies, counties, and other local jurisdictions; and preparing an annual strategic telecommunications plan which includes the feasibility of interfaces with federal and other state telecommunications networks and services.

(c) Recommending industry standards for telecommunications systems to assure multiuser availability and compatibility.

(d) Providing advice and assistance in the selection of telecommunications equipment to ensure that the telecommunications needs of state agencies are met and that procurements are compatible throughout state agencies and are consistent with the state's strategic and tactical plans for telecommunications.

(e) Providing management oversight of statewide telecommunications systems developments.

(f) Providing for coordination of, and comment on, plans and policies and operational requirements from departments which utilize telecommunications in support of their principal function, such as the

Office of Emergency Services, National Guard, health and safety agencies, and others with primary telecommunications programs.

(g) Monitoring and participating on behalf of the state in the proceedings of federal and state regulatory agencies and in congressional and state legislative deliberations which have an impact on state government telecommunications activities.

(h) Developing plans and policy regarding teleconferencing as an alternative to state travel and regarding emergency communications.

SEC. 90. Section 15301.5 of the Government Code is repealed.

SEC. 91. Section 15333.3 of the Government Code is amended to read:

15333.3. (a) The California Space and Technology Alliance shall exist to foster the development of activities in California related to space flight including, but not limited to, space vehicle launches, space education and job training infrastructure and research launches, manufacturing, academic research, applied research, economic diversification, business development, tourism, and education. The alliance shall also function as the California Spaceport Authority.

(b) The alliance shall be an official recipient of grants from federal, state, or local government or from private businesses or individuals, for California space flight-related activities, including, but not limited to, studies, services, infrastructure improvements and modernization, and defense transition programs to the extent permitted by law. Any other entity legally eligible may also receive grant funds for these purposes.

(c) The alliance shall be an advocate in support of California space flight-related activities, including, but not limited to, the businesses, facilities, programs, developments, alterations, modifications, educational activities, and other programs impacting those activities.

(d) To the extent authorized under the Internal Revenue Code, the alliance shall define and promote changes in federal, state, and local statutes and regulations that will enhance the development of California space flight-related activities.

(e) (1) To the extent authorized under the Internal Revenue Code, the alliance shall report biennially, no later than July 1 of the reporting year, on the economic and employment impacts of California space flight-related activities to the Governor and the Legislature and other state agencies and commissions developing laws, regulations, decisions, or determinations affecting those activities.

(2) The alliance shall recommend to the Governor and the Legislature appropriate state funding mechanisms and amounts to promote development of California space flight-related activities.

(f) With regard to the development of California space flight-related activities, the alliance shall provide recommendations to the Governor and the Legislature in the form of strategic planning documents, and

shall act as the official policy advisor to the Governor and the Legislature.

(g) On matters relating to space flight-related activities, the alliance shall act as the official representative of state government to the federal government, other state governments, local government agencies, and the private sector.

(h) The alliance shall review space flight-related grant applications on behalf of the Trade and Commerce Agency, the Department of Transportation, and all other state agencies, and shall make recommendations to the agency for award of those grants.

(i) The alliance shall act as a clearinghouse for space flight-related issues and information.

(j) The alliance may perform the activities listed in Section 15346.6.

(k) In accordance with the California Defense Conversion Act of 1993 (Article 3.7 (commencing with Section 15346)) and with the cooperation of the California Defense Conversion Council, the alliance shall coordinate with Regional Technology Alliances in the development of California space flight-related activities to achieve the optimum utilization of defense conversion and other grant funds.

(*l*) The alliance shall foster and promote activities related to space flight in all parts of California, and all of its actions shall be taken to benefit the entire State of California.

(m) The alliance shall be a membership organization open to any person or business interested in California space flight-related activities. It shall be organized as a nonprofit corporation with a board of directors composed of no less than 15, but no more than 27 members. Each director shall serve a three-year term, and shall serve no more than three consecutive terms. Board members shall be selected by the alliance, with no more than 40 percent selected from the space flight industry, no more than 30 percent from local government agencies, and no more than 30 percent from the general public and industries other than space flight. One-third of the board of directors shall be residents of northern California, one-third residents of southern California, and one-third residents of central California. Nonvoting, ex officio board directors may be added at the discretion of the board.

(n) The alliance acting as a corporation may not engage in or hold stock or any controlling interest in for-profit endeavors relating to space flight-related activities.

(o) The alliance shall be accountable to the Secretary of Trade and Commerce and shall provide the secretary with quarterly reports of its activities and finances. The agency shall provide guidance and support to the alliance.

(p) The California Space Flight Competitive Grant Program is hereby established to provide funding, upon appropriation by the Legislature,

for the development of activities in California related to space flight. For purposes of this section, space flight activities shall include civil or commercial space transportation systems, new or improved space infrastructure, related space support services, or any additional activities that the alliance deems consistent with this section. Entities conducting activities in California intended to enhance or promote space flight, including public, private, educational, commercial, nonprofit, or for-profit entities are eligible to apply for the California Space Flight Competitive Grants.

(1) To the extent authorized by the Internal Revenue Code, the alliance shall promote California Space Flight Competitive Grants. If funding is appropriated by the Legislature, the alliance shall, at least annually, issue requests for proposals.

(2) (A) The alliance shall develop a minimum baseline set of requirements and points a grant application must receive in order to be considered for funding. Requirements in addition to the minimum baseline set, which are consistent with the goals and objectives of this program, may be added or deleted from each year's grant solicitation.

(B) Any grant application meeting the minimum baseline set of requirements and points described in subparagraph (A) is automatically eligible for consideration in three subsequent grant year solicitations. The applicant is not required to resubmit a new grant application during this time, but, in future grant solicitations, may provide the review panel with any of the following:

(i) Additional information to enhance its current minimum baseline set of requirements and points.

(ii) Any additional information on the grant application that may be necessary to complete any new or existing requirements as provided for in subparagraph (A).

(C) The program shall award grants based upon a competitive application process, addressing, at a minimum, each project's eligibility, a review of the proposal's scientific and technological aspects, and the ability to fulfill the goals of the program.

(q) It is the intent of the Legislature that the following be considered in developing the minimum baseline set of requirements in subparagraph (A) of paragraph (2) of subdivision (p):

(1) Identification of all sources of funding for the entire project, which should include at least one of the following:

(A) A private sector company or companies.

(B) One or more foundations, industry associations, or nonprofit cooperative associations, or any combination thereof.

(C) Tangible or intangible in-kind support, including staff, facilities, applied technology, or other, as defined further in the grant solicitation.

(D) Federal or local government funding.

(2) No substitution of other project funding by this grant.

(3) A demonstration that a majority of the project will be undertaken in California.

(4) Inclusion of one or more of the following in the project, each of which should have significant operations in the state:

(A) Private sector companies.

(B) Foundations, industry associations, or nonprofit cooperative associations.

(5) An agreement among all project participants as to the intellectual property rights relative to the project.

(6) The potential impact on the state's economy.

(7) The cost-effectiveness of the project.

(8) The importance of state funding for the viability of the project.

(9) Cost sharing by other project participants.

(r) In evaluating grant proposals, the alliance shall establish an impartial review panel comprised of technical and scientific experts and government representatives to review grant applications. The panel shall be composed of members from throughout the state who are knowledgeable about activities related to space flight. The panel membership shall be selected so as to afford representation of all parts of the state so far as it is practicable. No more than 30 percent of the panel members shall be government representatives, and all other members shall either be actively involved in industries related to space flight, or technical and scientific experts in activities related to space flight.

(1) The review panel shall review and evaluate California Space Flight Competitive Grant applications based on the grant solicitation requirements. In accordance with subparagraph (A) of paragraph (2) of subdivision (p), a point system shall be developed to evaluate the grant applications similar to those set forth in Sections 8450 and 15379.3. In making evaluations, the review panel shall apply the criteria and priorities as determined by the grant solicitation. The grant review shall include a determination as to whether the project is eligible, the application is complete, and the proposed use of funding is consistent with the requirements of the grant solicitation. The grant review shall also include a determination that there is no conflict of interest, and any other technical evaluation determined necessary.

(2) The review panel shall compile a preliminary list of grant applications for projects determined to be qualified pursuant to paragraph (1), and submit the list to a coalition composed of the review panel, the center, and the Trade and Commerce Agency, each of which shall have one vote.

(3) The coalition shall rank grant applications on the preliminary list by the degree to which each meets the criteria described in the grant solicitation, and shall forward this final, consolidated list to the

Secretary of Trade and Commerce for awarding of grant funding. The final, consolidated list may include the coalition's recommendation as to the amount of state funding for each grant application, potential multiyear funding of a grant application which must be encumbered in a single fiscal year, or both.

(4) The Secretary of Trade and Commerce shall award grants, based on the review coalition's final recommendation list, and to the extent funds are available, to applications receiving the highest ranking, unless the secretary finds that changes to the ranking are necessary due to noncompliance with the grant solicitation criteria or because they pose conflicts of interest. The Secretary of Trade and Commerce may overturn a recommendation by the coalition only if the secretary finds clear and convincing evidence to support that action. A report on the funding determination shall be transmitted to the Governor and the chairs of the Senate and Assembly fiscal committees.

(s) The alliance is not eligible to apply for grant funding under this section.

(t) The alliance may establish an advisory committee to provide input, evaluation, program funding recommendations, and other recommendations on the California Space Flight Competitive Grant Program. The committee may also provide recommendations on other space flight-related issues, as directed by the alliance. The committee membership may include representatives from local governments, industry, civic and research organizations, or the general public located in areas with active grant applications. The committee may also include members from throughout the state with an interest in space flight activities.

(u) Nothing in this section shall preclude the state from providing alternative funding allocations for space-related activities.

SEC. 92. Section 15333.4 of the Government Code is amended to read:

15333.4. (a) The Highway to Space Program is hereby established to promote the development of a commercial space transportation system based in California. Any entity conducting commercial space flight-related activities in California may choose to participate in the Highway to Space Program.

(b) To the extent authorized by the Internal Revenue Code, the Western Commercial Space Center, a nonprofit corporation, shall be charged with promotion and coordination of entities choosing to participate in the Highway to Space Program.

(c) The Highway to Space Competitive Grant Program is hereby established to provide funding, upon appropriation by the Legislature, for the development of activities in California related to commercial space infrastructure. For purposes of this section, commercial space

infrastructure shall include civil or commercial space transportation systems, new or improved space infrastructure, related space support services, or any additional activities that the center deems consistent with these specifications. Entities conducting activities in California intended to enhance or promote commercial space infrastructure or space flight, including public, private, educational, commercial, nonprofit, or for-profit entities are eligible to apply for the Highway to Space Competitive Grants.

(1) To the extent authorized by the Internal Revenue Code, the center shall promote Highway to Space Competitive Grants. If funding is appropriated by the Legislature, the center shall, at least annually, issue requests for proposals.

(2) (A) The center shall develop a minimum baseline set of requirements and points a grant application must receive to be considered for funding. Requirements in addition to the minimum baseline set, which are consistent with the goals and objectives of this program, may be added or deleted from each year's grant solicitation.

(B) Any grant application meeting the minimum baseline set of requirements and points in paragraph (2) is automatically eligible for consideration in three subsequent grant year solicitations. The applicant is not required to resubmit a new grant application during this time, but may, in future grant solicitations, provide the review panel with any of the following:

(i) Additional information to enhance its current minimum baseline set of requirements and points.

(ii) Any additional information on the grant application that may be necessary to complete any new or existing requirements as provided for in subparagraph (A).

(C) The program shall award grants based upon a competitive application process, addressing, at a minimum, each project's eligibility, a review of the proposal's scientific and technological aspects, and the ability to fulfill the goals of the program.

(d) It is the intent of the Legislature that the following be considered in developing the minimum baseline set of requirements in subparagraph (A) of paragraph (2) of subdivision (c):

(1) Identification of all sources or funding for the entire project, which should include at least one of the following:

(A) A private sector company or companies.

(B) One or more foundations, industry associations, or nonprofit cooperative associations.

(C) Tangible or intangible in-kind support including staff, facilities, applied technology, or other, as defined further in the grant solicitation.

(D) Federal or local government funding.

(2) No substitution of other project funding by this grant.

(3) A demonstration that a majority of the project will be undertaken in California.

(4) Inclusion of one or more of the following in the project, each of which should have significant operations in the state:

(A) Private sector companies.

(B) Foundations, industry associations, or nonprofit cooperative associations.

(5) An agreement among all project participants as to the intellectual property rights relative to the project.

(6) The potential impact on the state's economy.

(7) The cost-effectiveness of the project.

(8) The importance of state funding for the viability of the project.

(9) Cost sharing by other project participants.

(e) In evaluating grant proposals, the center shall establish an impartial review panel comprised of technical and scientific experts and government representatives to review grant applications. The panel shall be composed of members from throughout the state who are knowledgeable of commercial space infrastructure, or related activities. The panel membership shall be selected so as to afford representation of all parts of the state so far as is practicable. No more than 30 percent of the panel members shall be government representatives, and all other members shall either be actively involved in industries related to space flight, or technical and scientific experts in activities related to space flight.

(1) The review panel shall review and evaluate Highway to Space Competitive Grant applications, based on the grant solicitation requirements. In accordance with subparagraph (A) of paragraph (2) of subdivision (c), a point system shall be developed to evaluate the grant applications similar to those set forth in Sections 8450 and 15379.3. In making evaluations, the review panel shall apply the criteria and priorities, as determined by the grant solicitation. The grant review shall include a determination as to whether the project is eligible, the application is complete, and the proposed use of funding is consistent with the requirements of the grant solicitation. The grant review shall include a determination that there is no conflict of interest, and any other technical evaluation determined necessary.

(2) The review panel shall compile a preliminary list of grant applications for projects determined to be qualified pursuant to paragraph (1), and submit the list to a coalition composed of the review panel, the alliance, and the Trade and Commerce Agency, each of which shall have one vote.

(3) The coalition shall rank grant applications on the preliminary list by the degree to which each meets the criteria described in the grant solicitation and shall forward this final, consolidated list to the Secretary

of Trade and Commerce for awarding of grant funding. The list may include the coalition's recommendation as to the amount of state funding for each grant application, potential multiyear funding of a grant application which must be encumbered in a single fiscal year, or both.

(4) The Secretary of Trade and Commerce shall award grants, based on the coalition's final recommendation list, and to the extent funds are available, to applications receiving the highest ranking, unless the secretary finds that changes to the ranking are necessary due to noncompliance with the grant solicitation criteria or because they pose conflicts of interest. The Secretary of Trade and Commerce may overturn a recommendation by the coalition only if the secretary finds clear and convincing evidence to support that action.

(f) The center is not eligible to apply for grant funding under this section.

(g) The Western Commercial Space Center shall be an official recipient of grants from federal, state, or local government or from private businesses or individuals, for Highway to Space Program activities, including, but not limited to, studies, services, infrastructure improvements and modernization, and defense transition programs, to the extent permitted by law. Any other entity legally eligible may also receive grant funds for these purposes.

(h) The Western Commercial Space Center acting as a corporation may not engage in or hold stock or any controlling interest in for-profit endeavors relating to space flight-related activities.

(i) The center may establish an advisory committee to provide input, evaluation, program funding recommendations, and other recommendations on the Highway to Space Competitive Grant Program. The committee may also provide recommendations on other space flight-related issues, as directed by the center. The committee membership may include representatives from local governments, industry, civic and research organizations, or the general public located in areas with active grant applications. The committee may also include members from throughout the state with an interest in space flight activities.

(j) Nothing in this section shall preclude the state from providing alternative funding allocations for space-related activities.

SEC. 93. Section 15378 of the Government Code is amended to read:

15378. (a) The Secretaries of the Business, Transportation and Housing, Health and Welfare, California Environmental Protection, Resources, and State and Consumer Services Agencies, and the heads of the independent agencies subject to the provisions of this chapter shall ensure that the departments, commissions, boards, and other

administrative divisions within their agencies that issue permits comply with the provisions of this chapter.

(b) The secretaries and agency heads shall adopt regulations establishing an appeal process through which an applicant can appeal directly to the secretary or agency head for a timely resolution of any dispute arising from a violation of the time periods required by this chapter. The regulations shall provide for the full reimbursement of any and all filing fees paid by a permit applicant whose application was not processed within the time limits adopted by an agency pursuant to this chapter, and whose appeal to the secretary or agency head was decided in the applicant's favor. The appeal shall be decided in the applicant's favor if the state agency has exceeded its established maximum time period for issuance or denial of the permit, the agency has complied with any notice and hearing requirements, and the agency has failed to establish good cause for exceeding the time period pursuant to subdivision (h) of Section 15376. Information regarding the appeal process shall be included in the permit application forms issued by the agency.

SEC. 94. Section 15813.6 of the Government Code is amended to read:

15813.6. In consultation with the State Architect, the council shall prepare a report relative to the art in state buildings program pursuant to this chapter, to be submitted to Members of the Legislature as part of any report on the activities and programs of the council.

SEC. 95. Section 16582 of the Government Code is repealed.

SEC. 96. Section 16649.91 of the Government Code is repealed.

SEC. 97. Section 17562 of the Government Code is amended to read:

17562. (a) The Legislature hereby finds and declares that the increasing revenue constraints on state and local government and the increasing costs of financing state-mandated local programs make evaluation of the cumulative effects of state-mandated local programs imperative. Accordingly, it is the intent of the Legislature to establish a method for regularly reviewing the costs of state-mandated local programs, by evaluating the benefit of previously enacted mandates.

(b) (1) A statewide association of local agencies or a Member of the Legislature may submit a proposal to the Legislature recommending the elimination or modification of a state-mandated local program. To make such a proposal, the association or member shall submit a letter to the Chairs of the Assembly Committee on Local Government and the Senate Committee on Local Government specifying the mandate and the concerns and recommendations regarding the mandate. The association or member shall include in the proposal all information relevant to the conclusions. If the chairs of the committees desire additional analysis of

the submitted proposal, the chairs may refer the proposal to the Legislative Analyst for review and comment. The chairs of the committees may refer up to a total of 10 of these proposals to the Legislative Analyst for review in any year. Referrals shall be submitted to the Legislative Analyst by December 1 of each year.

(2) The Legislative Analyst shall review and report to the Legislature with regard to each proposal that is referred to the office pursuant to paragraph (1). The Legislative Analyst shall recommend that the Legislature adopt, reject, or modify the proposal. The report and recommendations shall be submitted annually to the Legislature by March 1 of the year subsequent to the year in which referrals are submitted to the Legislative Analyst.

(3) The Department of Finance shall review all statutes enacted each year that contain provisions making inoperative Section 2229 or Section 2230 of the Revenue and Taxation Code or Section 17561 or Section 17565 that have resulted in costs or revenue losses mandated by the state that were not identified when the statute was enacted. The review shall identify the costs or revenue losses involved in complying with the provisions of the statutes. The Department of Finance shall also review all statutes enacted each year that may result in cost savings authorized by the state. The Department of Finance shall submit an annual report of the review required by this subdivision, together with the recommendations as it may deem appropriate, by December 1 of each year.

(c) It is the intent of the Legislature that the Assembly Committee on Local Government and the Senate Committee on Local Government hold a joint hearing each year regarding the following:

(1) The reports and recommendations submitted pursuant to subdivision (b).

(2) The reports submitted pursuant to Sections 17570, 17600, and 17601.

(3) Legislation to continue, eliminate, or modify any provision of law reviewed pursuant to this subdivision. The legislation may be by subject area or by year or years of enactment.

SEC. 98. Section 19793 of the Government Code is amended to read:

19793. By November 15 of each year beginning in 1978, the State Personnel Board shall report to the Governor, the Legislature, and the Department of Finance on a census of the state workforce and any underutilization problems in a state agency or department that may indicate failure to provide equal employment opportunity to minorities, women, and persons with disabilities during the past fiscal year. The report also shall include information on laws that discriminate or have the effect of discrimination on the basis of race, color, religion, national

origin, political affiliation, sex, age, or marital status. The Legislature shall evaluate the equal employment opportunity efforts of state agencies during its evaluation of the Budget Bill.

SEC. 99. Section 19993.05 of the Government Code is amended to read:

19993.05. (a) This section shall be known and may be cited as the Freedom of Financial Choice Act.

(b) The department shall permit officers and employees participating in a tax-deferred savings plan established by the department under this chapter or Chapter 9 (commencing with Section 19999.5) to invest in a range of investment options including, but not limited to, stocks and bonds listed with and traded on the New York Stock Exchange, the American Stock Exchange, or the National Market System sponsored by the National Association of Securities Dealers (NASD) and the National Association of Securities Dealers Automated Quotations system (NASDAQ), or any successor association, annuities, and shares or units of open-ended registered investment companies. However, the department may limit the number of banks, mutual fund companies, investment brokers, life insurance companies, and other financial institutions offering investments under the plans as necessary to ensure the continued qualification of the plan under the Internal Revenue Code and the cost-efficient and timely administration of the plans.

(c) No fiduciary of a plan established by the department under this chapter or Chapter 9 (commencing with Section 19999.5) shall be liable for any loss that results from any individual investment choice made by a participant of a plan, except that this subdivision shall not extend to any malfeasance or misfeasance by any fiduciary of a plan established by the department under this chapter or Chapter 9 (commencing with Section 19999.5).

(d) Notwithstanding any other provision of law, the Deferred Compensation Plan Fund (0915) is exempt from the application of Article 2 (commencing with Section 11270) of Chapter 3 of Part 3 of Division 3.

SEC. 100. Section 21662 of the Government Code is amended to read:

21662. The board shall consult with employer and employee representatives of the state and local government entities for whom the board administers retirement benefits. The board and each employer is authorized to recover the administrative costs of the long-term care insurance program from insurance carriers and premiums paid by enrollees. Costs recovered by the board from insurance carriers and premiums paid by enrollees shall be deposited in the Public Employees' Long-Term Care Fund.

SEC. 101. Section 27279.4 of the Government Code is amended to read:

27279.4. (a) The California Attorney General shall appoint an Electronic Recordation Task Force consisting of voluntary representatives from governmental agencies and industry groups specified in subdivision (b) who shall meet on a regular basis to address the technical, legal, security and economic issues associated with electronic recordation. The task force shall make recommendations regarding all of the following:

(1) In addition to requesters qualifying under Section 27279.2, which persons and entities should be authorized to digitize and record documents electronically after January 1, 2000, in order to limit real property fraud, forgery, and consumer risks associated with electronic recordation and provide a cost benefit to the county.

(2) Guidelines for the standardization of both software and hardware used by counties to ensure maximum efficiency, cost-effectiveness, and maximum use of the electronic recordation process by requesters qualifying under Sections 27279.2 and 27279.3.

(3) Appropriate recording fees and other assessments to cover increased costs to both county recorders and requesters.

(b) The task force described in subdivision (a) shall consist of representatives from governmental and industry groups, including county recorders, county district attorneys, the Franchise Tax Board, Fannie Mae, the United States Internal Revenue Service, trustees, mortgage bankers, financial institutions, and the title insurance and real estate industries.

SEC. 102. Section 30401 of the Government Code is amended to read:

30401. (a) If the county has not filed a plan of adjustment with the bankruptcy court by January 1, 1996, the Governor may appoint an individual to serve as trustee of the county. The appointment may occur at any time after January 1, 1996, until confirmation of the plan. Notwithstanding the timely filing of a plan of adjustment, the Governor shall appoint a trustee if the Governor determines that, as of May 1, 1996, or any date thereafter, the parties specified below have failed to reach substantial agreement on the terms of the plan of adjustment and the timely confirmation of the plan appears unlikely. Before reaching the foregoing determination, the Governor or his or her designee shall first consult with (1) the specified county officers and the board of supervisors, (2) the Official Committee of Unsecured Creditors of the County of Orange appointed in the pending case, and (3) the Official Committee of Investment Pools Participants appointed in the investment pools case. The trustee is a public official of the state and shall serve at the pleasure of, and is responsible to, the Governor.

(b) The trustee shall have recognized expertise in management and public finance.

(c) The trustee may institute a financial plan for the county if the county fails to present a balanced budget.

(d) In implementing a financial plan for the county, the trustee may exercise all necessary and appropriate powers of the county board of supervisors, subject to the same legal limitations that apply to the board of supervisors.

(e) The trustee shall exercise the powers granted pursuant to this chapter for an emergency period that ends upon the adoption, after the appointment of the trustee, of two consecutive balanced final budgets and achievement of two positive audited fund balances, as determined by the Governor or his or her designee.

SEC. 103. Section 30606 of the Government Code is repealed.

SEC. 104. Section 51207 of the Government Code is amended to read:

51207. (a) On or before May 1 of every other year, the Department of Conservation shall report to the Legislature regarding the implementation of this chapter by cities and counties.

(b) The report shall contain, but not be limited to, the number of acres of land under contract in each category and the number of acres of land which were removed from contract through cancellation, eminent domain, annexation, or nonrenewal.

(c) The report shall also contain the following specific information relating to not less than one-third of all cities and counties participating in the Williamson Act program:

(1) The number of contract cancellation requests for which notices of hearings were mailed to the Director of Conservation pursuant to Section 51284 which were approved by boards or councils during the prior two years or for which approval is still pending by boards or councils.

(2) The amount of cancellation fees payable to the county treasurer as deferred taxes and which are required to be transmitted to the Controller pursuant to subdivision (d) of Section 51283 which have not been collected or which remain unpaid.

(3) The total number of acres covered by certificates of cancellation of contracts during the previous two years.

(4) The number of nonrenewal and withdrawal of renewal notices received pursuant to Section 51245 and the number of expiration notices received pursuant to Section 51246 during the previous two years.

(5) The number of acres covered by nonrenewal notices that were not withdrawn and expiration notices during the previous two years.

(d) The department may recommend changes to this chapter which would further promote its purposes.

(e) The Legislature may, upon request of the department, appropriate funds from the deferred taxes deposited in the General Fund pursuant to subdivision (d) of Section 51283 in an amount sufficient to prepare the report required by this section.

SEC. 105. Section 54238.7 of the Government Code is amended to read:

54238.7. Except those properties the Department of Transportation has in escrow as of August 15, 1997, to sell, the Department of Transportation shall not dispose of any surplus property in the City of South Pasadena prior to January 31, 1998.

SEC. 106. Section 65302.6 of the Government Code is repealed.

SEC. 108. Section 67523 of the Government Code is repealed.

SEC. 110. Section 68511.2 of the Government Code is amended to read:

68511.2. Notwithstanding any other provision of law, the Judicial Council shall provide by rule for the photographic, microphotographic, mechanical, or electronic entry, storage, and retrieval of court records.

SEC. 112. Section 68604 of the Government Code is amended to read:

68604. The Judicial Council shall collect and maintain statistics, and shall publish them at least on a yearly basis, regarding the compliance of the superior court of each county and of each branch court with the standards of timely disposition adopted pursuant to Section 68603. In collecting and publishing these statistics, the Judicial Council shall measure the time required for the resolution of civil cases from the filing of the first document invoking court jurisdiction, and for the resolution of criminal cases from the date of arrest, including a separate measurement in felony cases from the first appearance in superior court. The Judicial Council shall report its findings and recommendations to the Legislature in a biennial Report on the State of California's Civil and Criminal Justice Systems.

The Judicial Council shall conduct a two-year study on the stipulated continuance authorized by subdivision (c) of Section 68616.

SEC. 113. Section 70219 of the Government Code is repealed.

SEC. 113.5. Section 75060.3 of the Government Code is repealed.

SEC. 114. Section 75560.3 of the Government Code is repealed.

SEC. 115. Section 77009 of the Government Code is amended to read:

77009. (a) For the purposes of funding trial court operations, each board of supervisors shall establish in the county treasury a Trial Court Operations Fund, which will operate as an agency fund. All funds appropriated in the Budget Act and allocated and reallocated to each court in the county by the Judicial Council shall be deposited into the fund. Accounts shall be established in the Trial Court Operations Fund

for each trial court in the county, except that one account may be established for courts which have a unified budget. In a county where court budgets include appropriations for expenditures administered on a countywide basis, including, but not limited to, court security, centralized data processing and planning and research services, an account for each centralized service shall be established and funded from those appropriations.

(b) The moneys of the Trial Court Operations Fund arising from deposits of funds appropriated in the Budget Act and allocated or reallocated to each court in the county by the Judicial Council shall be payable only for the purposes set forth in Sections 77003 and 77006.5, and for services purchased by the court pursuant to subdivisions (b) and (c) of Section 77212. The presiding judge of each court in a county, or his or her designee, shall authorize and direct expenditures from the fund and the county auditor-controller shall make payments from the funds as directed. Approval of the board of supervisors is not required for expenditure from this fund.

(c) All funds received by a trial court from any source shall be deposited in the trial court operations fund, except as provided in this section. Funds that are received to fulfill the requirements of Article 4 (commencing with Section 4250) of Chapter 2 of Part 2 of Division 9 and Division 14 (commencing with Section 10000) of the Family Code shall be identified and maintained in a separate account established in the fund for this purpose. All other funds that are received for purposes other than court operations, as defined in Section 77003 and Rule 810 of the California Rules of Court, shall be identified and maintained in one or more separate accounts established in the fund pursuant to procedures adopted by the Judicial Council. This subdivision shall only apply to funds received by the courts for operating and program purposes. This subdivision shall not apply to either of the following:

(1) Funds received by the courts pursuant to Section 68084, if those funds are not for operating or program use.

(2) Payments from a party or a defendant received by a trial court or the county for any fees, fines, or forfeitures.

(d) Interest received by a county that is attributable to investment of money required by this section to be deposited in its Trial Court Operations Fund shall be deposited in the fund and shall be used for trial court operations purposes.

(e) In no event shall interest be charged to the Trial Court Operations Fund, except as provided in Section 77009.1.

(f) Reasonable administrative expenses incurred by the county associated with the operation of this fund shall be charged to each court on a pro rata basis in proportion to the total amount allocated to each court in this fund.

(g) A county, or city and county, may bill trial courts within its jurisdiction for costs for services provided by the county, or city and county, as described in Sections 77003 and 77212, including indirect costs as described in paragraph (7) of subdivision (a) of Section 77003 and Section 77212. The costs billed by the county, or the city and the county, pursuant to this subdivision shall not exceed the costs incurred by the county, or the city and the county, of providing similar services to county departments or special districts.

(h) Pursuant to Section 77206, the Controller, at the request of the Legislature or the Judicial Council, may perform financial and fiscal compliance audits of this fund.

(i) The Judicial Council with the concurrence of the Department of Finance and the Controller's office shall establish procedures to implement this section and to provide for payment of trial court operations expenses, as described in Sections 77003 and 77006.5, incurred on July 1, 1997, and thereafter.

SEC. 116. Section 77604 of the Government Code is amended to read:

77604. (a) The task force shall be appointed by October 1, 1997.

(b) The task force shall meet and establish its operating procedures on or before January 1, 1998.

SEC. 117. Section 77605 of the Government Code is amended to read:

77605. (a) It is the intent of the Legislature to enact a personnel system, that shall take effect on or before January 1, 2001, for employment of trial court employees. The personnel system shall have uniform statewide applicability and promote organizational and operational flexibility in accordance with Section 77001.

(b) Nothing in this chapter is intended to prejudge or compel a finding by the task force that court or county or state employment is preferred.

(c) No provision of this article is intended to reduce judicial or court employee salary or benefits.

(d) No provision of this chapter shall be deemed to affect the current employment status of, or reduce benefits for, any peace officer involved in court operations.

SEC. 118. Section 77654 of the Government Code is amended to read:

77654. (a) The task force shall be appointed on or before October 1, 1997.

(b) The task force shall meet and establish its operating procedures on or before September 1, 1998.

(c) The task force shall review all available court facility standards and make preliminary determinations of acceptable standards for

construction, renovation, and remodeling of court facilities in an interim report.

(d) The task force shall complete a survey of all trial and appellate court facilities in the state and report its findings to the Judicial Council, the Legislature, and the Governor in a second interim report on or before January 1, 2001. The report shall document all of the following:

(1) The state of existing court facilities.

(2) The need for new or modified court facilities.

(3) The currently available funding options for constructing or renovating court facilities.

(4) The impact which creating additional judgeships has upon court facility and other justice system facility needs.

(5) The effects which trial court coordination and consolidation have upon court and justice system facilities needs.

(6) Administrative and operational changes which can reduce or mitigate the need for added court or justice system facilities.

(7) Recommendations for specific funding responsibilities among the entities of government including full state responsibility, full county responsibility, or shared responsibility.

(8) A proposed transition plan if responsibility is to be changed.

(9) Recommendations regarding funding sources for court facilities and funding mechanisms to support court facilities.

(e) The interim reports shall be circulated for comment to the counties, the judiciary, the Legislature, and the Governor. The task force may also circulate these reports to users of the court facilities.

(f) The task force shall submit a final report to the Judicial Council, the Legislature, and the Governor on or before July 1, 2001. The report shall include all elements of the interim reports incorporating any changes recommended by the task force in response to comments received.

(g) Notwithstanding any other provision of law, during the period from July 1, 1997, to June 30, 2001, the board of supervisors of each county shall be responsible for providing suitable and necessary facilities for judicial officers and court support staff for judicial positions created prior to July 1, 1996, to the extent required by Section 68073. The board of supervisors of each county shall also be responsible for providing suitable and necessary facilities for judicial officers and court support staff for judgeships authorized by statutes chaptered in 1996 to the extent required by Section 68073, provided that the board of supervisors agrees that new facilities are either not required or that the county is willing to provide funding for court facilities. Unless a court and a county otherwise mutually agree, the state shall assume responsibility for suitable and necessary facilities for judicial officers

and support staff for any judgeships authorized during the period from January 1, 1998, to June 30, 2001.

SEC. 119. Section 92204 of the Government Code is repealed.

SEC. 120. Section 96103 of the Government Code is repealed.

SEC. 121. Section 65.8 of the Harbors and Navigation Code is repealed.

SEC. 122. Section 658.6 of the Harbors and Navigation Code is repealed.

SEC. 123. Section 1200 of the Harbors and Navigation Code is amended to read:

1200. The board shall, from time to time, review pilotage expenses and establish guidelines for the evaluation and application of these expenses regarding its recommendations for adjustments in rates.

SEC. 124. Section 3927 of the Harbors and Navigation Code is amended to read:

3927. The State Controller and the State Treasurer shall keep full and particular account and record of all their proceedings under this part, and they shall transmit to the Governor an abstract of all such proceedings thereunder. All books and papers pertaining to the matter provided for in this part shall at all times be open to the inspection of any party interested, or the Governor, or the Attorney General, or a committee of either house of the Legislature, or a joint committee of both, or any citizen of the State.

SEC. 125. Section 1342.1 of the Health and Safety Code is amended to read:

1342.1. (a) The Legislature finds and declares all of the following:

(1) More than 16 million Californians are enrolled in health care service plans, and this number is likely to grow significantly over the next decade.

(2) Although the Knox-Keene Health Care Service Plan Act of 1975 contains many consumer protections, there is interest on the part of consumers and providers to determine if additional protections may be necessary.

(3) Health care service plans have many different structures and payment mechanisms, and there is interest on the part of health care service plans, providers, health professions educators, and consumers as to whether and how these structures and payment mechanisms affect quality and cost.

(b) The Governor shall convene a task force on health care service plans, composed of 30 members, to research all of the following by January 1, 1998:

(1) The picture of health care service plans, as it stands in California today, including, but not limited to, the different types of health care service plans, how they are regulated, how they are structured, how they

operate, the trends and changes in health care delivery, and how these changes have affected the health care economy, academic medical centers, and health professions education.

(2) Whether the goals of managed care provided by health care service plans are being satisfied, including the goals of controlling costs and improving quality and access to care.

(3) A comparison of the effects of provider financial incentives on the delivery of health care in health care service plans, other managed care plans, and fee-for-service settings.

(4) The effect of managed care on the patient-physician relationship, if any.

(5) The effect of other managed care plans on academic medical centers and health professions education.

(c) The task force shall be composed of equal representation from the following groups:

(1) Health care service plans, including at least one local initiative under contract with the State Department of Health Services as part of the two-plan model for Medi-Cal managed care, and at least one disability insurer.

(2) Employers who purchase health care.

(3) Health care service plan enrollees.

(4) Providers of health care.

(5) Representatives from consumer groups.

(d) The members of the task force shall be appointed as follows:

(1) The Senate Committee on Rules shall appoint five members, one from each of the categories set forth in subdivision (c).

(2) The Speaker of the Assembly shall appoint five members, one from each of the categories set forth in subdivision (c).

(3) The Governor shall appoint 20 members, four from each of the categories set forth in subdivision (c).

(e) Notwithstanding any other provision of law, the members of the task force shall receive no per diem or travel expense reimbursement, or any other expense reimbursement.

SEC. 126. Section 1422 of the Health and Safety Code is amended to read:

1422. (a) The Legislature finds and declares that it is the public policy of this state to assure that long-term health care facilities provide the highest level of care possible. The Legislature further finds that inspections are the most effective means of furthering this policy. It is not the intent of the Legislature by the amendment of subdivision (b) enacted by Chapter 1595 of the Statutes of 1982 to reduce in any way the resources available to the state department for inspections, but rather to provide the state department with the greatest flexibility to concentrate its resources where they can be most effective.

(b) (1) Without providing notice of these inspections, the state department shall, in addition to any inspections conducted pursuant to complaints filed pursuant to Section 1419, conduct inspections annually, except with regard to those facilities which have no class ''AA,'' class ''A,'' or class ''B'' violations in the past twelve months. The state department shall also conduct inspections as may be necessary to assure the health, safety, and security of patients in long-term health care facilities. Every facility shall be inspected at least once every two years. The department shall vary the cycle in which inspections of long-term health care facilities are conducted to reduce the predictability of the inspections.

(2) The state department shall submit to the federal Department of Health and Human Services on or before July 1, 1985, for review and approval, a request to implement a three-year pilot program designed to lessen the predictability of the long-term health care facility inspection process. Two components of the pilot program shall be (A) the elimination of the present practice of entering into a one-year certification agreement, and (B) the conduct of segmented inspections of a sample of facilities with poor inspection records, as defined by the state department. At the conclusion of the pilot project, an analysis of both components shall be conducted by the state department to determine effectiveness in reducing inspection predictability and the respective cost benefits. Implementation of this pilot project is contingent upon federal approval.

(c) Except as otherwise provided in subdivision (b), the state department shall conduct unannounced direct patient care inspections at least annually to inspect physician and surgeon services, nursing services, pharmacy services, dietary services, and activity programs of all the long-term health care facilities. Facilities evidencing repeated serious problems in complying with this chapter or a history of poor performance, or both, shall be subject to periodic unannounced direct patient care inspections during the inspection year. The direct patient care inspections shall assist the state department in the prioritization of its efforts to correct facility deficiencies.

(d) All long-term health care facilities shall report to the state department any changes in the nursing home administrator or the director of nursing services within 10 calendar days of the changes.

(e) Within 90 days after the receipt of notice of a change in the nursing home administrator or the director of nursing services, the state department may conduct an abbreviated inspection of the long-term health care facilities.

(f) If a change in a nursing home administrator occurs and the Board of Nursing Home Administrators notifies the state department that the new administrator is on probation or has had his or her license suspended

within the previous three years, the state department shall conduct an abbreviated survey of the long-term health care facility employing that administrator within 90 days of notification.

SEC. 127. Section 11759.4 of the Health and Safety Code is amended to read:

11759.4. Not later than January 1 of each year, the department, in collaboration with the counties and providers of alcohol and drug services, shall report to the Legislature during budget hearings regarding the status of the implementation of this chapter.

SEC. 128. Section 13143.10 of the Health and Safety Code is repealed.

SEC. 129. Section 18400.1 of the Health and Safety Code is amended to read:

18400.1. (a) In accordance with subdivision (b), the enforcement agency shall enter and inspect mobilehome parks, as required under this part, at least once every seven years, to ensure enforcement of this part and the regulations adopted pursuant to this part. The enforcement agency's inspection shall include an inspection of the exterior portions of individual manufactured homes and mobilehomes in each park inspected. Any notices of violation of this part shall be issued pursuant to Chapter 3.5 (commencing with Section 18420).

(b) In developing its mobilehome park maintenance inspection program, the enforcement agency shall inspect the mobilehome parks that the enforcement agency determines either:

(1) Had the most serious, or a substantial number of serious, health and safety violations as a result of inspections of the parks made pursuant to the mobilehome park maintenance inspection program during the 1991 through 1999 phase of the program.

(2) Have complaints that have been made to the enforcement agency regarding serious health and safety violations in the park. A single complaint of a serious health and safety violation shall not automatically trigger an inspection of the entire park unless upon investigation of that single complaint the enforcement agency determines that there is a violation and that an inspection of the entire park is necessary.

(c) Nothing in this part shall be construed to allow the enforcement agency to issue a notice for a violation of existing laws or regulations that were not violations of the laws or regulations at the time the mobilehome park received its original permit to operate, or the standards governing any subsequent permit to construct, or at the time the manufactured home or mobilehome received its original installation permit, unless the enforcement agency determines that a condition of the park, manufactured home, or mobilehome endangers the life, limb, health, or safety of the public or occupants thereof.

(d) Not less than 30 days prior to the inspection of a mobilehome park under this section, the enforcement agency shall provide individual written notice of the inspection to the registered owners of the manufactured homes or mobilehomes, with a copy of the notice to the occupants thereof, if different than the registered owners, and to the owner or operator of the mobilehome park and the responsible person, as defined in Section 18603.

(e) At the sole discretion of the enforcement agency's inspector, a representative of either the park operator or the mobilehome owners may accompany the inspector during the inspection if that request is made to the enforcement agency or the inspector requests a representative to accompany him or her. If either party requests permission to accompany the inspector or is requested by the inspector to accompany him or her, the other party shall also be given the opportunity, with reasonable notice, to accompany the inspector. Only one representative of the park owner and one representative of the mobilehome owners in the park may accompany the inspector at any one time during the inspection. If more than one representative of the mobilehome owners in the park requests permission to accompany the inspector, the enforcement agency may adopt procedures for choosing that representative.

(f) The enforcement agency shall coordinate a preinspection orientation for mobilehome owners and mobilehome park operators with the use of an audio-visual presentation furnished by the department to affected local enforcement agencies. Enforcement agencies shall furnish the audio-visual presentation to park operators and mobilehome owner representatives in each park subject to inspection not less than 30 days prior to the inspection. Additionally, it is the Legislature's intent that the department shall, where practicable, conduct live presentations, forums, and outreach programs throughout the state to orient mobilehome owners and park operators on the mobilehome park maintenance inspection program and their rights and obligations under the program.

(g) Any local enforcement agency that relinquishes enforcement authority to the department shall remit to the department fees collected pursuant to paragraph (2) of subdivision (c) of Section 18502 that have not been expended for purposes of that paragraph.

(h) 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. 129.3. Section 25171 of the Health and Safety Code is repealed.

SEC. 129.5. Section 25171.5 of the Health and Safety Code is repealed.

SEC. 129.7. Section 25200.11 of the Health and Safety Code is amended to read:

25200.11. (a) On or before July 1, 1993, the department shall take final action on each application for a hazardous waste facilities permit to be issued pursuant to Section 25200 for an offsite hazardous waste facility which is not subject to the time limits specified in Section 25200.7 and which has been operating under a grant of interim status pursuant to Section 25200.5 prior to January 1, 1992, if the permit application was submitted to the department before January 1, 1992. In taking final action pursuant to this section, the department shall either issue the hazardous waste facilities permit or make a final denial of the application. The department may extend final action for one year upon its determination that the permit application is complete and that more time is needed for review and evaluation of the application.

(b) On July 1, 1992, interim status granted for any existing offsite hazardous waste facility, which is not subject to the time limits specified in Section 25200.7, shall be terminated, unless the department has received an application for a final hazardous waste facilities permit pursuant to Section 25200 on or before June 30, 1992.

(c) Except for facilities subject to Section 25201.6, for any offsite facility, which facility or portion of facility was first granted interim status pursuant to Section 25200.5 on or after January 1, 1992, the department shall provide public notice for a permit determination to issue or deny a hazardous waste facilities permit for the facility, including a permit modification to incorporate a portion of a facility operating under a grant of interim status, not later than the following dates:

(1) For interim status that was first granted on or after January 1, 1992, but prior to January 1, 1994, not more than four years from the date that interim status was first granted.

(2) For interim status that was first granted on or after January 1, 1994, but prior to January 1, 1996, not more than three years from the date that interim status was first granted.

(3) For interim status that was granted on or after January 1, 1996, not more than two years from the date that interim status was first granted.

(d) For purposes of complying with this section, any change in the owner or operator of the hazardous waste facility shall not affect the applicability of this section with respect to permit determinations required for the facility, including a permit modification to incorporate a portion of the facility operating under a grant of interim status.

(e) (1) Except as provided in paragraph (2), on or before July 1, 1997, for any facility operating under a grant of interim status pursuant to Section 25200.5, based on operations conducted on November 19, 1980, the department shall review the basis for the grant of interim status,

including any amendments of that grant, and shall prepare status reports concerning the results of that review. If the department discovers an error in the scope of a grant of interim status made before July 1, 1997, and the error was caused in whole, or in part, by an intentional or negligent false statement or representation in the documents filed for purposes of establishing or obtaining interim status, the department shall take immediate action to correct the error, to the full extent authorized by law. In determining whether the scope of a grant of interim status made before July 1, 1997, complies with this chapter, the department shall require evidence other than facility owner or operator or employee declarations pertaining to previous activities that are the basis for that eligibility for interim status.

(2) Paragraph (1) does not apply to a facility for which, on or before March 1, 1997, a draft permit has been issued by and is being processed by the department, a draft environmental impact report, or other appropriate document prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) has been issued and made available for public comment and the environmental impact report or other document prepared pursuant to the California Environmental Quality Act considers all impacts to the environment from facility operations, including, at a minimum, all changes to operations since November 19, 1980, that were not addressed by a previous finally approved document prepared pursuant to the California Environmental Quality Act. The issuance of an appropriate document under the California Environmental Quality Act shall be deemed to have been issued for purposes of this paragraph if the lead agency has determined in writing that no further document is necessary under that act for purposes of the permit issuance.

SEC. 130. Section 25200.14.1 of the Health and Safety Code is amended to read:

25200.14.1. (a) On or before July 1, 1997, the department shall complete an evaluation of the phase I environmental assessment requirement specified by Section 25200.14, and identify any necessary and appropriate changes to that requirement.

(b) In evaluating the phase I environmental assessment requirement, the department shall, at a minimum, consider the following issues:

(1) Whether the phase I environmental assessment should continue to encompass the entire facility or be limited to a portion of the facility.

(2) The extent to which, and under what conditions, the information contained in the facility's phase I environmental assessment should be maintained as confidential information not available for release to the public or to governmental agencies other than the department.

SEC. 131. Section 25200.17 of the Health and Safety Code is amended to read:

25200.17. (a) Upon petition, the department may, by regulation, add new treatment activities to the list of activities eligible for operation pursuant to a permit-by-rule, under the regulations adopted by the department, or eligible for authorization under a grant of conditional authorization pursuant to Section 25200.3 or a grant of conditional exemption pursuant to Section 25201.5, if all of the following conditions are met:

(1) The department finds that the new waste stream and treatment process combination poses no greater risk to the public health and safety or environment than those waste stream and treatment process combinations currently eligible for operation pursuant to a permit-by-rule, under the regulations adopted by the department, or for authorization under a grant of conditional authorization pursuant to Section 25200.3 or conditional exemption pursuant to Section 25201.5, whichever is applicable.

(2) The activity does not require a hazardous waste facilities permit under the federal act.

(3) The new activity is not already identified as eligible under a permit-by-rule pursuant to the regulations adopted by the department, or a grant of conditional authorization or conditional exemption pursuant to this chapter.

(b) In making a determination whether to add a new activity, by regulation, to the list of activities eligible for operation under a permit-by-rule pursuant to the department's regulations, conditional authorization pursuant to Section 25200.3, or conditional exemption pursuant to Section 25201.5, the factors which the department shall consider, to the extent that information is available, shall include, but not be limited to, all of the following:

(1) The hazardous waste streams that are treated using the treatment methods and the hazards to public health or safety or to the environment posed by those hazardous wastes and their hazardous constituents.

(2) The complexity of the treatment method, the degree of difficulty in carrying it out, and the technology that is used to carry it out.

(3) Chemical or physical hazards that are associated with the use of the treatment process 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 treated using the treatment methods.

(4) The levels of specialized operator training, equipment maintenance, and monitoring that are required to ensure the safety of the treatment method and its effectiveness in treating particular hazardous waste streams.

(5) The types of accidents that may occur during the treatment of particular types of hazardous waste streams, the likely consequences of those accidents, and the actual accident history associated with use of the treatment method.

(6) The degree to which those hazardous waste streams or treatment methods are regulated under other provisions of law or regulations, including, but not limited to, process safety management requirements and risk management and prevention plans.

(7) If the treatment method uses a hazardous waste treatment technology that is certified by the department pursuant to Section 25200.1.5, the information and analyses that were used to determine that the treatment technology does not pose a significant potential hazard to public health or safety or to the environment.

SEC. 132. Section 25245.6 of the Health and Safety Code is repealed.

SEC. 133. Section 25269.9 of the Health and Safety Code is repealed.

SEC. 134. Section 25299.97 of the Health and Safety Code, as added by Chapter 814 of the Statutes of 1997, is amended to read:

25299.97. (a) For the purposes of this article, the following definitions shall apply:

(1) ''Public drinking water well'' means a wellhead that provides drinking water to a public water system, as that term is defined in Section 116275, that is regulated by the State Department of Health Services and that is subject to Section 116455.

(2) ''MTBE'' means methyl tertiary-butyl ether.

(3) ''GIS mapping system'' means a geographic information system that collects, stores, retrieves, analyzes, and displays environmental geographic data in a data base that is accessible to the public.

(4) ''Motor vehicle fuel'' includes gasoline, natural gasoline, blends of gasoline and alcohol or gasoline and oxygenates and any inflammable liquid, by whatever name the liquid may be known or sold, which is used or usable for propelling motor vehicles operated by the explosion type engine. It does not include kerosine, liquefied petroleum gas, or natural gas, in liquid or gaseous form.

(5) ''Oxygenated motor vehicle fuel'' is motor vehicle fuel, as defined in paragraph (4), that meets the federal definition for ''Oxygenated Fuel'' as defined in Section 7545(m) of Title 42 of the United States Code.

(6) ''Oxygenate'' means an organic compound containing oxygen that has been approved by the United States Environmental Protection Agency as a gasoline additive to meet the requirements for an ''oxygenated fuel'' pursuant to Section 7545 of Title 42 of the United States Code.

(b) The State Water Resources Control Board shall upgrade the data base created by Section 25299.39.1. This upgrade shall include the establishment of a statewide GIS mapping system as described in this section only upon an appropriation by the Legislature for this purpose.

(c) (1) For purposes of subdivision (b), the board shall create a GIS Mapping and Data Management Advisory Committee. The committee shall give the board advice on location standards, protocols, metadata, and the appropriate data to expand the data base to create a cost-effective GIS mapping system that will provide the appropriate information to allow agencies to better protect public drinking water wells and, if feasible, nearby aquifers that are reasonably expected to be used as drinking water, from contamination by motor vehicle fuel from underground storage tanks and intrastate and interstate pipelines that are regulated by the State Fire Marshal pursuant to the California Pipeline Safety Act of 1981, Chapter 5.5 (commencing with Section 51010.5) of Part 1 of Division 1 of Title 5 of the Government Code.

(2) The advisory committee shall include, at a minimum, members from appropriate state and local agencies, affected industry and business, the water agencies that provide drinking water in Santa Monica, the water agencies that provide drinking water in the Santa Clara Valley, nonprofit environmental groups dedicated to the conservation and preservation of natural resources, and underground storage tank owners.

(d) (1) The board shall create two pilot projects, the Santa Monica Groundwater Pilot Project and the Santa Clara Valley Groundwater Pilot Project, which shall terminate on July 1, 1999.

(2) The board shall create the pilot projects with the advice of the advisory committee so as to expedite and prioritize the upgrading of the data base for those regions of the state where groundwater provides, or would be called on in an emergency to provide, a significant portion of the region's drinking water.

(3) The board shall use the pilot projects to define and assess the parameters of the data base, identify data needs, develop opportunities to electronically link data bases and electronic submission of information, offer access to the public via the Internet, streamline existing processes, and work out the details for data management and a GIS mapping system as described in this article.

(4) The pilot projects shall study appropriate modification to public water systems and response times.

(e) To upgrade the data base as required by this section, the board, in consultation with the advisory committee, shall do all of the following:

(1) Coordinate with the Department of Water Resources and the State Department of Health Services to obtain the location of existing drinking

water wells and appropriate water resource and quality data to meet the requirements of this article.

(2) Coordinate with local agencies authorized to implement this chapter to obtain the location of all underground storage tanks that store motor vehicle fuel that are within 1,000 feet of a public drinking water well.

(3) Coordinate with local agencies authorized to implement this chapter to add the location of all known releases of motor vehicle fuel from underground storage tanks that are within 1,000 feet of a drinking water well.

(4) Coordinate with the State Fire Marshal to add the location and leak history of all pipelines or segments of pipelines that transport motor vehicle fuel and that are regulated by the State Fire Marshal pursuant to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code that are within 1,000 feet of an existing public drinking water well.

(f) The board may expend up to four hundred thousand dollars ($400,000) from the Underground Storage Tank Cleanup Fund for the purposes set forth in Section 25299.36 to fund the GIS mapping system projects referred to in this section.

SEC. 135. Section 25299.97 of the Health and Safety Code, as added by Chapter 815 of the Statutes of 1997, is amended to read:

25299.97. (a) For the purposes of this article, the following definitions shall apply:

(1) ''Public drinking water well'' means a wellhead that provides drinking water to a public water system, as that term is defined in Section 116275, that is regulated by the State Department of Health Services and that is subject to Section 116455.

(2) ''MTBE'' means methyl tertiary-butyl ether.

(3) ''GIS mapping system'' means a geographic information system that collects, stores, retrieves, analyzes, and displays environmental geographic data in a data base that is accessible to the public.

(4) ''Motor vehicle fuel'' includes gasoline, natural gasoline, blends of gasoline and alcohol or gasoline and oxygenates and any inflammable liquid, by whatever name the liquid may be known or sold, which is used or usable for propelling motor vehicles operated by the explosion type engine. It does not include kerosine, liquefied petroleum gas, or natural gas, in liquid or gaseous form.

(5) ''Oxygenated motor vehicle fuel'' is motor vehicle fuel, as defined in paragraph (4), that meets the federal definition for ''Oxygenated Fuel'' as defined in Section 7545(m) of Title 42 of the United States Code.

(6) ''Oxygenate'' means an organic compound containing oxygen that has been approved by the United States Environmental Protection

Agency as a gasoline additive to meet the requirements for an ''oxygenated fuel'' pursuant to Section 7545 of Title 42 of the United States Code.

(b) The State Water Resources Control Board shall upgrade the data base created by Section 25299.39.1. This upgrade shall include the establishment of a statewide GIS mapping system as described in this section only upon an appropriation by the Legislature for this purpose.

(c) (1) For purposes of subdivision (b), the board shall create a GIS Mapping and Data Management Advisory Committee. The committee shall give the board advice on location standards, protocols, metadata, and the appropriate data to expand the data base to create a cost-effective GIS mapping system that will provide the appropriate information to allow agencies to better protect public drinking water wells and, if feasible, nearby aquifers that are reasonably expected to be used as drinking water, from contamination by motor vehicle fuel from underground storage tanks and intrastate and interstate pipelines that are regulated by the State Fire Marshal pursuant to the California Pipeline Safety Act of 1981, Chapter 5.5 (commencing with Section 51010.5) of Part 1 of Division 1 of Title 5 of the Government Code.

(2) The advisory committee shall include, at a minimum, members from appropriate state and local agencies, affected industry and business, the water agencies that provide drinking water in Santa Monica, the water agencies that provide drinking water in the Santa Clara Valley, nonprofit environmental groups dedicated to the conservation and preservation of natural resources, and underground storage tank owners.

(d) (1) The board shall create two pilot projects, the Santa Monica Groundwater Pilot Project and the Santa Clara Valley Groundwater Pilot Project, which shall terminate on July 1, 1999.

(2) The board shall create the pilot projects with the advice of the advisory committee so as to expedite and prioritize the upgrading of the data base for those regions of the state where groundwater provides, or would be called on in an emergency to provide, a significant portion of the region's drinking water.

(3) The board shall use the pilot projects to define and assess the parameters of the data base, identify data needs, develop opportunities to electronically link data bases and electronic submission of information, offer access to the public via the Internet, streamline existing processes, and work out the details for data management and a GIS mapping system as described in this article.

(4) The pilot project shall study appropriate notification to public water systems and response times.

(e) To upgrade the data base as required by this section, the board, in consultation with the advisory committee, shall do all of the following:

(1) Coordinate with the Department of Water Resources and the State Department of Health Services to obtain the location of existing drinking water wells and appropriate water resource and quality data to meet the requirements of this article.

(2) Coordinate with local agencies authorized to implement this chapter to obtain the location of all underground storage tanks that store motor vehicle fuel that are within 1,000 feet of a public drinking water well.

(3) Coordinate with local agencies authorized to implement this chapter to add the location of all known releases of motor vehicle fuel from underground storage tanks that are within 1,000 feet of a drinking water well.

(4) Coordinate with the State Fire Marshal to add the location and leak history of all pipelines or segments of pipelines that transport motor vehicle fuel and that are regulated by the State Fire Marshal pursuant to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code that are within 1,000 feet of an existing public drinking water well.

(f) The board may expend up to four hundred thousand dollars ($400,000) from the Underground Storage Tank Cleanup Fund for the purposes set forth in Section 25299.36 to fund the GIS mapping system projects referred to in this section.

SEC. 135.1. Section 33760 of the Health and Safety Code is amended to read:

33760. (a) Within its territorial jurisdiction, an agency may determine the location and character of any residential construction to be financed under this chapter and may make mortgage or construction loans to participating parties through qualified mortgage lenders, or purchase mortgage or construction loans without premium made by qualified mortgage lenders to participating parties, or make loans to qualified mortgage lenders, for financing any of the following:

(1) Residential construction within a redevelopment project area.

(2) Residential construction of residences in which the dwelling units are committed, for the period during which the loan is outstanding, for occupancy by persons or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of the residence.

(3) To the extent required by Section 103A of Title 26 of the United States Code, as amended, to maintain the exemption from federal income taxes of interest on bonds or notes issued by the agency under this chapter, residences located within targeted areas, as defined by Section 103(b)(12)(A) of Title 26 of the United States Code. Any loans to qualified mortgage lenders shall be made under terms and conditions which, in addition to other provisions as determined by the agency, shall

require the qualified mortgage lender to use all of the net proceeds thereof, directly or indirectly, for the making of mortgage loans or construction loans in an appropriate principal amount equal to the amount of the net proceeds. Those mortgage loans may, but need not, be insured.

(b) (1) Not less than 20 percent (15 percent in target areas) of the units in any residential project financed pursuant to this section on or after January 1, 1986, shall be occupied by, or made available to, individuals of low and moderate income, as defined by Section 103(b)(12)(C) of Title 26 of the United States Code. If the sponsor elects to establish a base rent for units reserved for lower income households, the base rents shall be adjusted for household size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(2) Not less than one-half of the units described in paragraph (1) shall be occupied by, or made available to, very low income households, as defined by Section 50105. The rental payments for those units paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed the amount derived by multiplying 30 percent times 50 percent of the median adjusted gross income for the area, adjusted for family size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(c) Units required to be reserved for occupancy as provided in subdivision (b) and financed with the proceeds of bonds issued on or after January 1, 1986, shall remain occupied by, or made available to, those persons until the bonds are retired.

(d) This section shall become operative January 1, 1996.

SEC. 135.5. Section 34312.3 of the Health and Safety Code is amended to read:

34312.3. (a) Subject to the requirements of this section and of Article 5 (commencing with Section 34350), an authority may do any of the following:

(1) Issue revenue bonds for the purpose of financing the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing and for the provision of capital improvements in

connection with and determined necessary to the multifamily rental housing.

(2) Make or undertake commitments to make construction loans and mortgage loans to finance the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing.

(3) Purchase or undertake, directly or indirectly through lending institutions, commitments to purchase, construction loans, and mortgage loans originated in accordance with a financing agreement with the authority to finance the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing or make loans to lending institutions under terms and conditions which, in addition to other provisions determined by the authority, shall require the lending institutions to use the net proceeds of the loans for the making, directly or indirectly, of construction loans or mortgage loans to finance the acquisition, construction, rehabilitation, refinancing, or development of multifamily rental housing.

(b) An authority may develop, rehabilitate, or finance housing projects or participate in the development, rehabilitation, or financing of housing projects; or purchase, sell, lease, own, operate, or manage housing projects so assisted, subject to all of the requirements of this section.

So long as the proceeds of any sale, lease, or other disposition of real property, net of the cost of sale, are to be used directly to assist a housing project pursuant to this section for persons of low income, and the funds in any trust fund established pursuant to subdivision (f) are used directly to assist housing units for persons of very low income, an authority may, after a public hearing, sell, lease, or otherwise dispose of the real property without complying with any provision of law concerning disposition of surplus property, including, but not limited to, Sections 34315.5 and 34315.7.

An authority may convey surplus lands it acquires from another public agency to a nonprofit or private developer for development of single-family homes where the development will provide for home ownership for persons and families of low or moderate income, as defined in Section 50093. This conveyance shall be after a public hearing. With the exception of subdivisions (b), (c), and (d) of Section 34315.7, the conveyance need not comply with any law concerning the disposition of surplus properties, including, but not limited to, Section 34315.5 or subdivision (a) of Section 34315.7. The proceeds of any sale or other disposition of surplus land, net of the cost of sale, shall be used to assist a housing project pursuant to this section for persons of low income.

(c) (1) (A) Not less than 20 percent of all units in housing projects assisted by an authority pursuant to this section shall be available for

occupancy on a priority basis to persons of low income. In the case of housing projects located within a targeted area, as defined by Section 103(b)(12)(A) of Title 26 of the United States Code, not less than 15 percent of all units in those housing projects assisted pursuant to this section shall be for occupancy on a priority basis by persons of low income.

(B) If the sponsor elects to establish a base rent for units reserved for lower income households, the base rents shall be adjusted for household size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(2) (A) Not less than one-half of the units required to be available for occupancy pursuant to paragraph (1) and financed with any bonds issued on or after January 1, 1986, shall be occupied by, or made available to, very low income households, as defined by Section 50105.

(B) The rental payments for those units paid by the persons occupying the units (excluding any supplemental rental assistance from the state, the federal government, or any other public agency to those persons or on behalf of those units) shall not exceed the amount derived by multiplying 30 percent times 50 percent of the median adjusted gross income for the area, adjusted for family size, as determined pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor, for a family of one person in the case of a studio unit, two persons in the case of a one-bedroom unit, three persons in the case of a two-bedroom unit, four persons in the case of a three-bedroom unit, and five persons in the case of a four-bedroom unit.

(3) Any indebtedness incurred pursuant to a mortgage loan financed under the terms of this chapter shall be subject to acceleration and the balance owing declared immediately due and payable upon any sale of an owner-occupied residence to a purchaser who does not meet the required qualifications for borrowers as established by the authority.

(4) The authority shall require the owners of housing projects assisted pursuant to this section to accept as tenants, on the same basis as all other prospective tenants, in the units reserved for very low income households, any very low income households who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f), or its successor. The authority shall not permit a selection criteria to be applied to Section 8 certificate holders that is any more burdensome than the criteria applied to all other prospective tenants.

(5) No resident in housing units assisted pursuant to this section shall be denied continued occupancy or ownership because, after admission, the resident's family income increases to exceed the eligibility level. However, the authority shall ensure that percentage requirements of this section shall continue to be met by providing the next available unit or units to persons of low income or by taking other actions to satisfy the percentage requirements of this section.

(6) In determining whether the percentage requirements of subdivision (c) have been achieved, the following terms and conditions shall be applied:

(A) The requirement that 20 percent or 15 percent, as the case may be, of the housing units assisted by an authority pursuant to this section shall be available on a priority basis to, or occupied by, households whose adjusted gross income does not exceed the applicable limits prescribed by subdivision (c) shall apply to the aggregate number of units assisted by an authority pursuant to this section.

(B) This section applies only to housing units first assisted after January 1, 1983, and the percentage requirements of subdivision (c) shall be complied with by January 1, 1986, and on January 1 of each even-numbered year thereafter.

(C) The percentage requirements of subdivision (c) shall be achieved within each of the following categories: (1) rental housing developments; (2) homeownership developments; and (3) rehabilitation financing. Housing units provided by rehabilitation financing shall not be counted within either of the first two categories.

(d) Units required to be reserved for occupancy by subdivision (c) and financed with the proceeds of bonds issued on or after January 1, 1986, shall remain occupied by, or made available to, those persons until the bonds are retired.

(e) Multifamily rental housing financed pursuant to this section shall not be subject to the requirements of subparagraph (B) of paragraph (1) and paragraph (2) of subdivision (c), and the requirements of subdivision (d), if all of the following requirements are fulfilled:

(1) The housing authority offers each tenant a homeownership opportunity when the bonds are retired.

(2) A special trust fund or account which is funded with bond issuance proceeds or developer contributions, or both, is established no later than the time that the multifamily rental housing is first occupied. The initial funding of the account shall be no less than 5 percent of the face value of the bonds issued for the multifamily rental housing project. Upon repayment of the bonds, these funds, and all interest accruing thereon, less any amounts necessary to pay outstanding claims, shall be used to assist housing units for persons of very low income.

(3) The requirements of subparagraph (A) of paragraph (1) and subparagraph (A) of paragraph (2) of subdivision (c) shall remain in effect for the periods required by Section 103(b)(12)(B) of Title 26 of the United States Code.

(f) It is the intent of the Legislature, and the Legislature declares, that housing authorities are the local entities with primary responsibility for providing housing for low-income and very low income households within their jurisdictions. However, recognizing that housing projects only for low-income households cannot be adequately assisted or developed with currently available funds, and that excess funds from housing projects assisted pursuant to this section can be utilized to further assist in the provision of housing for lower income households, it is the intent of the Legislature that the authorization of this section is to be used to enhance and supplement the traditional housing authority role of providing housing only for low-income households.

SEC. 136. Section 39153 of the Health and Safety Code is amended to read:

39153. This chapter shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2006, deletes or extends that date.

SEC. 136.5. Section 40453 of the Health and Safety Code is repealed.

SEC. 137. Section 44003 of the Health and Safety Code is amended to read:

44003. (a) (1) An enhanced motor vehicle inspection and maintenance program is established in each urbanized area of the state, any part of which is classified by the Environmental Protection Agency as a serious, severe, or extreme nonattainment area for ozone or a moderate or serious nonattainment area for carbon monoxide with a design value greater than 12.7 ppm, and in other areas of the state as provided in this chapter.

(2) The enhanced motor vehicle inspection and maintenance program established pursuant to paragraph (1) shall be assessed jointly by the department and the state board periodically to determine whether changes in the program may be warranted. On or before January 1, 2003, the department and the state board shall jointly issue a report to the Legislature based on those periodic assessments, recommending any modifications to the enhanced program to improve its operations and lessen its impact on consumers while still achieving the necessary emission reductions to attain air quality standards. The report shall include a review of any program proposed pursuant to Section 15 of Chapter 803 of the Statutes of 1997.

(3) A basic vehicle inspection and maintenance program shall be continued in all other areas of the state where a program was in existence under this chapter as of the effective date of this paragraph.

(b) The department may prescribe different test procedures and equipment requirements for those areas described in subdivision (a). Program components shall be operated in all program areas unless otherwise indicated, as determined by the department. In those areas where the biennial program is not implemented and smog check inspections are required to complete the requirements set forth in Sections 4000.1 and 4000.2 of the Vehicle Code, program elements that apply in basic areas, including test equipment requirements for smog check stations, shall apply.

(c) (1) Districts classified as attainment areas may request the department to implement all or part of the program elements defined in this chapter. However, the department shall not implement the program established by Section 44010.5 in any area other than an urbanized area, any part of which is classified by the Environmental Protection Agency as a serious, severe, or extreme nonattainment area for ozone or a moderate or serious nonattainment area for carbon monoxide with a design value greater than 12.7 ppm.

(2) Districts that include areas classified as basic program nonattainment areas pursuant to subdivision (a) may, except as provided in paragraph (1), request the implementation in those areas of test procedures and equipment required for enhanced program areas and any other program requirement specified for enhanced program areas.

SEC. 138. Section 46077 of the Health and Safety Code is amended to read:

46077. The office shall maintain a program to ensure coordinated state and federal noise control programs including, but not limited to, the following:

(a) The study of federal noise regulations proposed for adoption pursuant to the Noise Control Act of 1972.

(b) The preparation of comments, evaluations, objections or the use of any other means to ensure that the federal government considers existing California noise control statutes and regulations prior to the adoption of regulations in order to prevent the adoption of federal noise regulations weaker than existing state standards.

SEC. 139. Section 50408 of the Health and Safety Code is amended to read:

50408. (a) On or before December 31 of each year, the department shall submit an annual report to the Governor and both houses of the Legislature on the operations and accomplishments during the previous fiscal year of the housing programs administered by the department,

including, but not limited to, the Emergency Housing and Assistance Program and Community Development Block Grant activity.

(b) The report shall include all of the following information:

(1) The number of units assisted by those programs.

(2) The number of individuals and households served and their income levels.

(3) The distribution of units among various areas of the state.

(4) The amount of other public and private funds leveraged by the assistance provided by those programs.

(5) Information detailing the assistance provided to various groups of persons by programs that are targeted to assist those groups.

(6) The information required to be reported pursuant to Section 17031.8.

SEC. 140. Section 50806 of the Health and Safety Code is repealed.

SEC. 141. Section 50834 of the Health and Safety Code is amended to read:

50834. (a) The department shall prepare a separate and discrete training manual and request for proposal for the economic development set-aside. The department shall ensure that it can respond to requests for grants as rapidly as possible. Once an economic development project award is approved by the director, a contract shall be executed and funds made available as soon as possible.

(b) Any program income received by a city or county grantee, or any loan repayments made by a beneficiary to a grantee, may be utilized by the city or county grantee for any activity currently eligible under federal law and regulations, provided that the department determines that the beneficiary or grantee has complied reasonably with the terms and conditions described in the contract between the grantee and the department.

(c) Any economic development set-aside of funds not encumbered for funding of a project by the end of the federal contract period shall revert to the general program and be set aside for use if approved projects for which no funds are available are pending.

(d) The department shall conditionally commit economic development allocations to projects that meet the requirements of this chapter up front, contingent upon the applicant receiving those other funding commitments necessary to complete the project.

SEC. 141.5. Section 52045 of the Health and Safety Code is repealed.

SEC. 142. Section 52570 of the Health and Safety Code is repealed.

SEC. 143. Section 57007 of the Health and Safety Code is amended to read:

57007. (a) The agency, and the offices, boards, and departments within the agency, shall institute quality government programs to

achieve increased levels of environmental protection and the public's satisfaction through improving the quality, efficiency, and cost-effectiveness of the state programs that implement and enforce state and federal environmental protection statutes. These programs shall be designed to increase the level of environmental protection while expediting decisionmaking and producing cost savings. The secretary shall create an advisory group comprised of state and local government, business, environmental, and consumer representatives experienced in quality management to provide guidance in that effort. The secretary shall develop a model quality management program that local agencies charged with implementing air quality, water quality, toxics, solid waste, and hazardous waste laws and regulations may use at their discretion.

(b) The agency, and each board, department, and office within the agency, shall submit a yearly report to the Governor and Legislature, no later than December 1 with respect to the previous fiscal year, reporting on the extent to which these state agencies have attained their performance objectives, and on their continuous quality improvement efforts.

(c) Nothing in this section abrogates any collective bargaining agreement or interferes with any established employee rights.

(d) For purposes of this section, ''quality government program'' means all of the following:

(1) A process for obtaining the views of employees, the regulated community, the public, environmental organizations, and governmental officials with regard to the performance, vision, and needs of the agency implementing the quality government program.

(2) A process for developing measurable performance objectiveness using the views of the persons and organizations specified in paragraph (1).

(3) Processes for continually improving quality and for training agency personnel, using the information obtained from implementing paragraphs (1) and (2).

SEC. 144. Section 100146 of the Health and Safety Code is repealed.

SEC. 145. Section 100340 of the Health and Safety Code is repealed.

SEC. 146. Section 104145 of the Health and Safety Code is amended to read:

104145. (a) The Legislature hereby requests the University of California to establish and administer the Breast Cancer Research Program, which is created by this act, as a comprehensive grant and contract program to support research efforts into the cause, cure, treatment, earlier detection, and prevention of breast cancer. It is the intent of the Legislature that this program incorporate the principles and

organizational elements specified in this act, including, but not limited to, a research program office with a director and other necessary staff, a Breast Cancer Research Council, and research review panels.

(b) For the purposes of this section:

(1) ''Breast cancer research'' includes, but is not limited to, research in the fields of biomedical science and engineering, the social, economic and behavioral sciences, epidemiology, technology development and translation, and public health.

(2) ''Council'' means the Breast Cancer Research Council.

(3) ''Grantee'' means any qualifying public, private, or nonprofit agency or individual, including, but not limited to, colleges, universities, hospitals, laboratories, research institutions, local health departments, voluntary health agencies, health maintenance organizations, corporations, students, fellows, entrepreneurs, and individuals conducting research in California.

(4) ''Program'' means the Breast Cancer Research Program.

(5) ''University'' means the University of California.

(c) It is the intent of the Legislature that this program be administered pursuant to the following principles:

(1) The university shall work in close collaboration with the council and seek the consent of the council before taking an action different from the action recommended by the council.

(2) The council shall develop the strategic objectives and priorities of the program, actively participate in the overall management of the program, and make final recommendations on which research grants should be funded based on the research priorities established for the program and the technical merits of the proposals as determined by peer review panels.

(3) The program shall fund innovative and creative research, with a special emphasis on research that complements, rather than duplicates, the research funded by the federal government and other entities.

(4) The university and the council shall work in close collaboration with the Breast Cancer Early Detection Program.

(5) All research funds shall be awarded on the basis of the research priorities established for the program and the scientific merit of the proposed research, as determined by an open, competitive peer review process that ensures objectivity, consistency, and high quality. All investigators, regardless of affiliation, shall have equal access and opportunity to compete for program funds.

(6) The peer review process for the selection of research grants awarded under this program shall be generally modeled on that used by the National Institutes of Health in its grantmaking process.

(7) An awardee shall be awarded grants for the full cost, both direct and indirect, of conducting the sponsored research consistent with those

federal guidelines governing all federal research grants and contracts. All intellectual property assets developed under this program shall be treated in accordance with state and federal law.

(8) In establishing its research priorities, the council shall consider a broad range of cross-disciplinary breast cancer research, as defined in paragraph (1) of subdivision (b), including, but not limited to, research into the cause, cure, and prevention of breast cancer; translational and technological research, including research regarding the development and translation of technologies of earlier detection; research regarding the cultural, economic, and legal barriers to accessing the health care system for early detection and treatment of breast cancer; and research examining the link between breast cancer and environmental factors, including both natural and industrial chemicals, estrogen imitators, and electromagnetic fields.

(d) It is the intent of the Legislature that the university, as lead agency, do all of the following:

(1) Establish the Breast Cancer Research Council in accordance with the following:

(A) The council shall consist of at least 13 and no more than 15 members representing a range of expertise and experience, appointed by the President of the University of California. Individuals and organizations may submit nominations to the council, and the University of California shall solicit nominations from relevant organizations and individuals. The council shall be comprised of the following members:

(i) Four members from breast cancer survivor and breast cancer-related advocacy groups, including, but not limited to, the California Breast Cancer Organizations (CABCO).

(ii) Four members drawn from the ranks of scientists or clinicians, including one from an independent research university in California. The scientists shall have expertise covering the various fields of scientific endeavor, including, but not limited to, the fields of biomedical research and engineering, social, economic, and behavioral research, epidemiology, and public health.

(iii) Two members from nonprofit health organizations with a commitment to breast cancer research and control.

(iv) One member who is a practicing breast cancer medical specialist.

(v) Two members from private industry with a commitment to breast cancer research and control, including, but not limited to, entrepreneurs, or persons from the science or high technology industry or persons from the health care sector.

(vi) One ex officio, nonvoting member from the Breast Cancer Early Detection Program.

(B) If the president appoints more than 13 members, it is the intent of the Legislature that the proportional representation remain substantially the same as set forth in subparagraph (A).

(C) Members shall serve without compensation, but may receive reimbursement for travel and other necessary expenses actually incurred in the performance of their official duties. Any member of the Breast Cancer Research Council shall be ineligible to apply for or receive funding for breast cancer research from the Breast Cancer Research Program during his or her term of service on the council, and for one cycle immediately following his or her term of service on the council, if the council member helped plan that subsequent cycle.

(D) Membership shall be staggered in such a way as to maintain a full council while ensuring a reasonable degree of continuity of expertise and consistency of direction.

(2) Provide overall coordination of the program.

(3) Provide staff assistance to the program and council.

(4) Develop administrative procedures relative to the solicitation, review, and awarding of grants to ensure an impartial, high quality peer review system.

(5) Recruit and supervise research review panels. The membership of these panels shall vary depending on the subject matter of the proposals and the review requirements, and shall draw on the most qualified individuals. The work of the review panels shall be administered pursuant to policies and procedures established for the implementation of the program. In order to avoid conflicts of interest and to ensure access to qualified reviewers, the university may utilize reviewers not only from California but also from outside the state. When serving on review panels, institutions, corporations, or individuals who have submitted grant applications for funding by this program shall be governed by conflict-of-interest provisions consistent with the National Institutes of Health Manual (Chapter 4510 (item h)), and any applicable conflict-of-interest provisions in state law.

(6) Provide for periodic program evaluation to ensure that research funded is consistent with program goals.

(7) Maintain a system of financial reporting and accountability.

(8) Provide for the systematic dissemination of research results to the public and the health care community, and provide for a mechanism to disseminate the most current research findings in the areas of cause, treatment, cure, earlier detection, and prevention of breast cancer, in order that these findings may be applied to the planning, implementation, and evaluation of the breast cancer-related programs of the State Department of Health Services, including the Breast Cancer Early Detection Program authorized by this act.

(9) Develop policies and procedures to facilitate the translation of research results into commercial, alternate technological, and other applications wherever appropriate and consistent with state and federal law.

(10) Transmit annually on or before each December 31, a report to the Legislature on grants made, grants in progress, program accomplishments, and future program directions. Each report shall include, but not be limited to, the following information:

(A) The number and dollar amounts of research grants, including the amount allocated to indirect costs.

(B) The subject of research grants.

(C) The relationship between federal and state funding for breast cancer research.

(D) The relationship between each project and the overall strategy of the research program.

(E) A summary of research findings including discussion of promising new areas.

(F) The institutions and campuses receiving grant awards.

In addition, the first annual report shall include an evaluation and recommendations concerning the desirability and feasibility of requiring for-profit grantees to compensate the state in the event that a grant results in the development of a profitmaking product. This evaluation shall include, but not be limited to, the costs and benefits of requiring a for-profit grantee to repay the grant, to provide the product at cost to Medi-Cal and other state programs serving low-income breast cancer patients, and to pay the state a percentage of the royalties derived from the product.

(e) It is the intent of the Legislature that no more than 5 percent of the allocation to the university be used for the purposes of administration of this program.

(f) It is the intent of the Legislature that the responsibilities of the council shall include, but not be limited to, the following:

(1) Development and review of the strategic objectives and research priorities of the program.

(2) Delineation of resource allocation across the various priorities established for the program.

(3) Participation in periodic program and financial review, including the report transmitted pursuant to paragraph (10) of subdivision (d).

(4) Development and review of guidelines to ensure fairness, neutrality, and adherence to the principles of merit and quality in the conduct of the program.

(5) Development of appropriate linkages to nonacademic entities, including, but not limited to, voluntary organizations, health care

delivery systems, industry, government agencies, research entrepreneurs, and public officials.

(6) Development and review of criteria and standards for granting awards.

(7) Oversight and review of the request for applications (RFA).

(8) Review of research review panel reports and recommendations for grant awards.

(9) Making of final recommendations on which grants are to be awarded.

(10) Development and review of oversight mechanisms for the dissemination of research results.

(11) Development and review of policies and liaison programs to facilitate the translation of research results into commercial, alternate technological, or other applications wherever appropriate.

(12) Establishment of its own internal rules of operation.

(13) Participation in the identification and recruitment of breast cancer advocates and survivors, clinicians, scientists, and persons from the science, high technology, or health care sector with relevant expertise for possible participation in a peer review panel. The council may propose to assign a member of the council to sit as a nonvoting member of the peer review panels.

SEC. 147. Section 104370 of the Health and Safety Code is amended to read:

104370. The committee shall be advisory to the department, the University of California, and State Department of Education for the following purposes:

(a) Evaluation of research, school- and community-based programs funded under this article as necessary in order to assess the overall effectiveness of efforts made by the programs to reduce the use of tobacco products. In order to evaluate tobacco education, research, and cessation programs, the committee shall seek the cooperation and assistance of the department, the State Department of Education, county offices of education, local lead agencies, administrative representatives, target populations, school officials, and researchers. A principal measurement of effectiveness shall be reduction of smoking rates among a given target population.

(b) Facilitation of programs directed at reducing and eliminating tobacco use that are operated jointly by more than one agency or entity. The committee shall propose strategies for the coordination of proposed programs administered by the department, the University of California, and the State Department of Education in order to avoid the duplication of services and to maximize the public benefit of the programs.

(c) Make recommendations to the department, the University of California, and the State Department of Education regarding the most

appropriate criteria for the selection of, standards of the operation of, and the types of programs to be funded under this article.

(d) Reporting to the Legislature on or before January 1 of each year on the number and amount of tobacco education programs funded by the Health Education Account, created by Section 30122 of the Revenue and Taxation Code, the amount of money in the account, any moneys previously appropriated to the department, the University of California, and the State Department of Education but unspent by the departments, a description and assessment of all programs funded under this article, and recommendations for any necessary policy changes or improvements for tobacco education programs.

(e) Ensuring that the most current research findings regarding tobacco use prevention are applied in designing the tobacco education programs administered by the department and the State Department of Education. The department and the State Department of Education shall apply the most current findings and recommendations of research including research funded by the Research Account of the Cigarette and Tobacco Products Surtax Fund created by Section 30122 of the Revenue and Taxation Code.

(f) Based on the results of programs supported by this article and any other proven methodologies available to the committee, produce a comprehensive master plan for implementing tobacco education programs throughout this state for the prevention and cessation of tobacco use. The master plan shall include implementation strategies for each target population specified in Section 104360 for programs throughout this state. The Tobacco Education and Research Oversight Committee shall submit the master plan to the Legislature biennially. The master plan and its revisions shall include recommendations on administrative arrangements, funding priorities, integration and coordination of approaches by the department, the University of California, and the State Department of Education and their support systems, as well as progress reports relating to each target population. The master plan shall establish a goal of achieving a 75-percent reduction in tobacco consumption in California by the year 1999.

SEC. 148. Section 108875 of the Health and Safety Code is amended to read:

108875. The department is responsible for the administration and enforcement of this chapter. The department, upon request, shall report to the Legislature concerning the number and findings of inspections performed and samples taken to determine compliance with this chapter.

SEC. 149. Section 119308 of the Health and Safety Code is amended to read:

119308. The President of the California Conference of Local Health Officers shall act as the chairperson of a task force to be formed for the

purpose of recommending legislation to the Legislature concerning licensing, training, sanitation, and other subjects deemed necessary to protect the health and welfare of persons seeking the services of practitioners of tattooing, body piercing, and permanent cosmetics. The task force shall be composed of 10 persons to be appointed by the President of the California Conference of Local Health Officers, and shall include a representative from the State Board of Barbering and Cosmetology, a physician and surgeon licensed in this state, a representative from a nonprofit professional body piercers' association, a representative from a nonprofit professional tattooists' association, a representative from a nonprofit professional permanent cosmetic association, a representative from a nonprofit professional cosmetology association, and a representative from an organization representing the interests of local health departments. The president of the California Conference of Local Health Officers may appoint the remaining three members from any other groups that may, in the judgment of the president, be of assistance.

SEC. 150. Section 120475 of the Health and Safety Code is amended to read:

120475. On or before March 15 on a biennial basis, the department shall submit a report to the Legislature on all of the following issues:

(a) The immunization status of young children in the state, based on available data.

(b) The steps taken to strengthen immunization efforts, particularly efforts through the Child Health and Disability Prevention Program.

(c) The steps taken to improve immunization levels among currently underserved minority children, young children in family day care and other child care settings, and children with no health insurance coverage.

(d) The improvements made in ongoing methods of immunization outreach and education in communities where immunization levels are disproportionately low.

(e) Its recommendations for a comprehensive strategy for fully immunizing all California children and its analysis of the funding necessary to implement the strategy.

SEC. 151. Section 120480 of the Health and Safety Code is amended to read:

120480. (a) Funds appropriated in the Budget Act of 1998 to the State Department of Health Services for the purpose of valley fever (coccidioidomycosis) vaccine research shall be used to continue and expand the current research effort being conducted by the Valley Fever Vaccine Project. This augmentation shall not be subject to review by the Department of General Services.

(b) The department shall augment and amend the existing contract to support research into the development of a vaccine to protect against

valley fever. The department may contract on a sole source basis to a nonprofit organization that has provided funding for vaccine research on valley fever. The contract shall require the organization to distribute research grants to support research efforts that are likely to advance the effort to develop a vaccine.

(c) The contractor shall establish an advisory group consisting of persons with relevant expertise in the fields of mycology and vaccine development and a representative from the department. The advisory group shall approve grants for those whose research is likely to advance the effort to develop a safe and effective vaccine. The contractor shall seek advice from the appropriate agencies in the National Institutes of Health and other federal agencies with experience in supporting vaccine research when reviewing the research of those receiving funds under this section. Funding awards shall be made so as to complement financial support provided by the federal government.

(d) The contractor shall provide the department with periodic status reports on the progress of the researchers receiving funds pursuant to this section. The department shall review progress reports from the contractor describing the research progress and plans for future funding.

(e) The contract shall require that funding is provided on the condition that, if a valley fever vaccine is developed and successfully marketed, the state shall be reimbursed for the cost of grants made under this section in proportion to the state's contribution to the research and development effort.

SEC. 152. Section 120805 of the Health and Safety Code is amended to read:

120805. (a) The department shall:

(1) Additionally, use funds appropriated by Section 6 of Chapter 23 of the Statutes of 1985 for purposes of making reimbursements to counties pursuant to Section 120895, for preventive education for individuals who are seropositive as a result of antibody testing.

(2) Issue contracts to evaluate the effectiveness of the AIDS information and education program conducted by the department.

(3) Issue contracts for development and implementation of pilot programs of professional education and training for hospital, home health agency, and attendant care workers.

(4) Issue contracts for the development and implementation of pilot programs to reduce the spread of AIDS through residential detoxification and outpatient detoxification and treatment services for intravenous drug users with AIDS or AIDS-related conditions.

(5) Monitor state and federal AIDS-related budget and policy development, and coordinate budget items to ensure that funding for matters related to AIDS is adequate and complete within the department each fiscal year.

(6) Develop and maintain an information clearinghouse within the department including periodic updates or releases to inform health professionals or community organizations providing services to people with AIDS or AIDS-related conditions of the status of current or new clinical drug trials. These updates shall be compiled through review of scientific journals and in conjunction with the UC AIDS Task Force and researchers conducting clinical drug trials in California.

(7) Review, edit, and input summaries from scientific journals into the Computerized AIDS Information Network (CAIN), and do outreach about CAIN availability to health professionals.

(8) Develop and conduct a needs assessment of the availability of supportive services for people with AIDS or AIDS-related conditions. The needs assessment shall be conducted in conjunction with the state's AIDS education contractors and with any public or private agencies providing services to people with AIDS or AIDS-related conditions.

(9) Promote information and education programs for the general public to correct misinformation about AIDS. This shall include, but need not be limited to, periodic press releases to the printed and broadcast media and public service announcements.

(10) Establish, with the assistance of other state agencies as the department deems appropriate, centralized translation services to facilitate development of multilanguage, culturally relevant educational materials on HIV infection.

(11) Include, to the extent feasible, in its HIV surveillance and reporting practices, a breakdown of the major Asian-Pacific Islander subgroup populations. This breakdown shall be reflected in the surveillance and morbidity statistics issued by the director pursuant to Section 120825.

(12) Include, to the extent feasible with existing resources, in its HIV surveillance and reporting practices, information concerning newly identified clinical manifestations of HIV infection and available resources for health care practitioners to seek diagnostic and treatment information.

(b) The director shall contract for a prospective two-year study to accomplish the following objectives:

(1) Determine the medical costs of AIDS, comparing inpatient care, outpatient care, physician services, and community support services.

(2) The study shall include cost factors in the review of inpatient costs that may not be apparent in the analysis of charges, such as private rooms and social work.

(c) Notwithstanding Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code, if the director determines that it is in the best interest of the state to enter into a contract for the purposes specified below without competitive bids, then the state

director may, during the 1985–86 fiscal year, enter into a sole source contract for all of the following:

(1) Educational program evaluation.

(2) Education of hospital, home health agency, and attendant care workers.

(3) Drug education and treatment programs.

(4) The cost-of-care study.

SEC. 153. Section 123775 of the Health and Safety Code is amended to read:

123775. Each infant medical dispatch center established pursuant to this article shall annually report on the progress of the project, the status of the data base obtained pursuant to Section 123760, and any necessary changes to meet the goals prescribed in Section 123760 to the Legislature upon request of either the Joint Legislative Budget Committee or other interested committees or Members of the Legislature.

SEC. 154. Section 10089.40 of the Insurance Code is amended to read:

10089.40. (a) Rates established by the authority shall be actuarially sound so as to not be excessive, inadequate, or unfairly discriminatory. Rates shall be established based on the best available scientific information for assessing the risk of earthquake frequency, severity, and loss. Rates shall be equivalent for equivalent risks. Factors the board shall consider in adopting rates include, but are not limited to, the following:

(1) Location of the insured property and its proximity to earthquake faults and to other geological factors that affect the risk of earthquake or damage from earthquake.

(2) The soil type on which the insured dwelling is built.

(3) Construction type and features of the insured dwelling.

(4) Age of the insured dwelling.

(5) The presence of earthquake hazard reduction factors, including those set forth in subdivision (a) of Section 10089.2.

(b) (1) If scientific information from geologists, seismologists, or similar experts that assesses the frequency or severity of risk of earthquake is considered in setting rates or in arriving at the modeling assumptions upon which those rates are based, the information may be used to establish differentials among risks only if the information, assumptions, and methodology used are consistent with the available geophysical data and the state of the art of scientific knowledge within the scientific community.

(2) Scientific information from geologists, seismologists, or similar experts shall not be conclusive to support the establishment of different rates between the most populous rating territories in the northern and

southern regions of the state unless that information, as analyzed by experts such as the United States Geological Survey, the California Division of Mines and Geology, and experts in the scientific or academic community, clearly shows a higher risk of earthquake frequency, severity, or loss between those most populous rating territories to support those differences.

(3) It is not the intent of the Legislature in adopting this subdivision to mandate a uniform statewide flat rate for California Earthquake Authority policies.

(c) The classification system established by the board shall not be adjusted or tempered in any way to provide rates lower than are justified for classifications that present a high risk of loss or higher than are justified for classifications that present a low risk of loss.

(d) Policyholders who have retrofitted their homes to withstand earthquake shake damage according to standards and to the extent set by the board shall enjoy a premium discount or credit of 5 percent on the authority-issued policy of residential earthquake coverage. For residential dwellings, the 5-percent discount shall be applicable if the dwelling, at a minimum, meets the following requirements: the dwelling was built prior to 1979, is tied to the foundation, has cripple walls braced with plywood or its equivalent, and the water heater is secured to the building frame. For mobilehomes, the 5-percent discount shall be applicable if the mobilehome, at a minimum, is reinforced by an earthquake resistant bracing system certified by the Department of Housing and Community Development. The board may approve a premium discount or credit above 5 percent, as long as the discount or credit is determined actuarially sound by the authority.

(e) All rates shall be approved by the commissioner prior to their use.

SEC. 155. Section 10890 of the Insurance Code is repealed.

SEC. 156. Section 12693.93 of the Insurance Code is amended to read:

12693.93. The board shall prepare an evaluation of the program and other state efforts to expand coverage to children in conformance with Section 2108 of Title XXI of the Social Security Act. The evaluation shall incorporate measurement of the delivery of preventive services by health plans and health care providers and assessment of changes over time in the health status of children participating in the program.

SEC. 157. Section 3214 of the Labor Code is amended to read:

3214. (a) The Department of Corrections and the Department of the Youth Authority shall, in conjunction with all recognized employee representative associations, develop policy and implement the workers' compensation early intervention program by December 31, 1989, for all department employees who sustain an injury. The program shall include, but not be limited to, counseling by an authorized independent early

intervention counselor and the services of an agreed medical panel to assist in timely decisions regarding compensability. Costs of services through early intervention shall be borne by the departments.

(b) It is the intent of the Legislature to reduce all costs associated with the delivery of workers' compensation benefits, in balance with the need to ensure timely and adequate benefits to the injured worker. Toward this goal the workers' compensation early intervention program was established in the Department of Corrections and the Department of the Youth Authority. The fundamental concept of the program is to settle disputes rather than to litigate them. This is a worthwhile concept in terms of cost control for the employer and timely receipt of benefits for the worker. To ascertain the effectiveness of the program is crucial in helping guide policy in this arena.

SEC. 158. Section 1335 of the Military and Veterans Code is amended to read:

1335. With respect to the design and construction of an enhanced memorial, the commission may do all of the following:

(a) Establish a schedule for the design, construction, and dedication of the enhanced memorial.

(b) Implement procedures to solicit designs for beautifying and enhancing the memorial and devise a selection process for the choice of the design.

(c) Select individuals or organizations to provide fundraising services and to construct the enhanced memorial.

(d) Review and monitor the design and construction of the memorial and establish a program for the rededication of the memorial.

(e) Consult with the Department of General Services to determine parameters for the final size of the memorial.

(f) Consult with and obtain final design and site orientation approval from the Department of General Services.

SEC. 158.2. Section 1170.6 of the Penal Code is repealed.

SEC. 158.5. Section 7433 of the Penal Code is amended to read:

7433. Money in the fund may only be expended pursuant to appropriations by the Legislature.

SEC. 159. Section 9008 of the Penal Code is repealed.

SEC. 160. Section 1001.65 of the Penal Code is amended to read:

1001.65. (a) A district attorney may collect a fee if his or her office collects and processes a bad check. The amount of the fee shall not exceed thirty-five dollars ($35) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense.

(b) Notwithstanding subdivision (a), when a criminal complaint is filed in a bad check case after the maker of the check fails to comply with the terms of the bad check diversion program, the court, after conviction,

may impose a bad check collection fee for the collection and processing efforts by the district attorney of not more than thirty-five dollars ($35) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense, not to exceed one thousand dollars ($1,000) in the aggregate. The court also may, as a condition of probation, require a defendant to participate in and successfully complete a check writing education class. If so required, the court shall make inquiry into the financial condition of the defendant and, upon a finding that the defendant is able in whole or part to pay the expense of the education class, the court may order him or her to pay for all or part of that expense.

(c) If the district attorney elects to collect any fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any bank fees that the victim may have been assessed. In no event shall reimbursement of a bank charge to the victim pursuant to subdivision (a) or (b) exceed ten dollars ($10) per check.

SEC. 161. Section 13510.6 of the Penal Code is repealed.

SEC. 162. Section 13602 of the Penal Code is amended to read:

13602. (a) The Department of Corrections shall use the training academy at Galt. This academy shall be known as the Richard A. McGee Academy. The Department of the Youth Authority shall use the training center at Stockton. The training divisions, in using the funds, shall endeavor to minimize costs of administration so that a maximum amount of the funds will be used for providing training and support to correctional peace officers while being trained by the departments.

(b) Each new cadet who attends an academy after July 1, 2001, shall complete the course of training, pursuant to standards approved by CPOST before he or she may be assigned to a post or job as a peace officer. After July 1, 2001, every newly appointed first-line or second-line supervisor shall complete the course of training, pursuant to standards approved by CPOST for that position. Every effort shall be made to provide training prior to commencement of supervisorial duties. If this training is not completed within six months of appointment to that position, any first-line or second-line supervisor shall not perform supervisory duties until the training is completed.

SEC. 163. Section 13731 of the Penal Code is amended to read:

13731. (a) The San Diego Association of Governments may serve as the regional clearinghouse for criminal justice data involving domestic violence. The association may obtain monthly crime statistics from all law enforcement agencies in San Diego County. These law enforcement agencies may include their domestic violence supplements in the monthly crime reports that are supplied to the association. The association may obtain client-based data regarding clients or victims of domestic violence who seek protection in San Diego County shelters.

(b) Contingent upon the appropriation of funds therefor, the association shall do all of the following:

(1) Create a standardized, uniform intake form, to be referred to as a Compilation of Research and Evaluation Intake Instrument, also known as C.O.R.E., for use in San Diego County's domestic violence shelters. This form shall be completed and ready to use in the field for data collection purposes not later than March 31, 1997. The C.O.R.E. intake form shall be standardized to compile the same information from all clients for all shelters.

(2) Collect and analyze the standardized, uniform intake form in order to compile information including, but not limited to, victim sociodemographic characteristics, descriptions of domestic violence incidents pertaining to each victim and services needed by domestic violence shelter clients within San Diego County.

(3) Use the collected client-based data to describe the nature and scope of violence from the perspective of domestic violence shelter clients and to determine the service needs of clients and what gaps in service delivery exist, so that resources can be appropriately targeted and allocated. All data supplied to the association shall be stripped of any information regarding the personal identity of an individual to protect the privacy of domestic violence shelter clients.

(4) Establish an advisory committee in order to facilitate the research effort and to assess the value of the research project. The advisory committee shall consist of representation from the shelters, as well as members of the San Diego County Domestic Violence Council, local justice administrators, and the principal investigator. The advisory committee shall meet at least four times before April 30, 1999, to review the progress of the research, including research methodology, data collection instruments, preliminary analyses, and work product as they are drafted. Advisory committee members shall evaluate the final research product in terms of applicability and utility of findings and recommendations.

SEC. 164. Section 13892 of the Penal Code is repealed.

SEC. 164.5. Section 10350 of the Public Contract Code is repealed.

SEC. 165. Section 12104 of the Public Contract Code is repealed.

SEC. 167. Section 674 of the Public Resources Code is repealed.

SEC. 170. Section 5017 of the Public Resources Code is repealed.

SEC. 172. Section 5094.2 of the Public Resources Code is amended to read:

5094.2. With respect to each project as to which a letter of intent has been given, the Resources Agency through the Department of Parks and Recreation and the Department of Fish and Game, in cooperation with affected local public agencies, shall conduct an investigation and study of the project with respect to the areas of interest of each and prepare

plans of the proposed state participation therein. The plans shall be submitted, upon request, to each affected local public agency for its review and comments thereon. The comments shall be transmitted to the agency by the affected local public agency within such period as determined by the administrator, which period shall be not less than 30 days nor more than 60 days from the date of submission to the local public agency.

SEC. 173. Section 5096.244 of the Public Resources Code is amended to read:

5096.244. (a) The State Coastal Conservancy shall prepare and adopt priorities, criteria, and procedures for the making of grants to local public agencies or nonprofit organizations pursuant to Section 5096.232.

The procedures shall specify the categories of expenditures for grants, and shall include procedures for the submittal, review, and approval of applications, disbursements, and, where appropriate, repayment of grant funds.

(b) An application for a grant pursuant to this article shall be submitted to the State Coastal Conservancy for evaluation, review of adequacy, and classification as a park, beach, coastal access, or other project necessary to protect coastal resource values.

(c) The minimum amount that may be applied for any individual project is one thousand dollars ($1,000).

(d) Every application for a grant shall comply with the provisions of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(e) Funds granted pursuant to Section 5096.232 may be expended for development, rehabilitation, or restoration only on lands owned by, or subject to a lease or other interest held by, the applicant. If those lands are not owned by the applicant, the applicant shall first demonstrate to the satisfaction of the State Coastal Conservancy that the development, rehabilitation, or restoration will provide benefits commensurate with the type and duration of interest in land held by the applicant.

(f) No state grant funds authorized under Section 5096.232 may be disbursed until the applicant agrees that any property acquired or developed with the funds shall be used by the applicant only for the purpose for which the funds were requested and that no other use, sale, or other disposition of the property shall be permitted except by specific act of the Legislature. If the use of the property is changed to one other than permitted under the category in Section 5096.232 from which the funds were appropriated, or the property is sold or otherwise disposed of, an amount equal to the amount of the grant or equal to the fair market value of the real property, or portion thereof, acquired or developed with the grant, whichever is greater, shall be used by the local public agency

or the nonprofit organization for a purpose authorized in that category or shall be reimbursed to the State Coastal Conservancy Fund of 1984 for a use authorized in that category.

(g) No state grant funds authorized under Section 5096.232 may be disbursed unless the applicant agrees to maintain and operate the property acquired or developed pursuant to this article for a period commensurate with the type of project and the proportion of state grant funds and local funds allocated to the capital costs of the project.

SEC. 174. Section 5631 of the Public Resources Code is amended to read:

5631. The department, in cooperation with the federal government, local public agencies, and appropriate representatives of industry, shall, from time to time as needed but no less frequently than once very five years, coordinate and conduct a statewide needs analysis in relation to the purposes of this chapter. That analysis shall include a full review of the grant program authorized pursuant to this chapter. The department shall report its findings and recommendations from any analysis, including recommendations as to funding levels and sources in connection with the grant program, to the Legislature. The department may recommend specific legislative changes to the program.

SEC. 175. Section 5780.17 of the Public Resources Code is repealed.

SEC. 176. Section 6211 of the Public Resources Code is amended to read:

6211. (a) Whenever a parcel of timbered land under the jurisdiction of the commission is totally surrounded by, or is contiguous to, a national forest or a state forest, the commission may, if it is in the best interests of the state to do so, and after 10 days' prior notice to the Secretary of the Resources Agency for the receipt of comments, provide for the harvesting of timber from that land at the same time as the orderly harvesting of the surrounding or adjacent federal-owned or state-owned timber is conducted. In carrying out this section, the commission may enter into agreements with the United States or the Department of Forestry and Fire Protection for the inclusion of timbered lands under the jurisdiction of the commission within a total parcel to be offered for timber harvesting contracts.

(b) Notwithstanding any other provision of law, timber from lands under the jurisdiction of the commission shall not be sold to any California division of a primary manufacturer, or to any person for resale to a primary manufacturer, who does either of the following:

(1) Uses that timber at any plant not located within the United States, unless it is sawn on four sides to dimensions not greater than 4 inches by 12 inches.

(2) Within one year prior to the bid date and one year after the termination of the contract, sells unprocessed timber which is harvested from private timberlands and is exported into foreign commerce. For the purposes of this section, ''unprocessed timber'' has the same meaning as set forth in subdivision (d) of Section 4650.1.

(c) Any purchaser of timber from lands under the jurisdiction of the commission who makes use of the timber in violation of paragraph (1) of subdivision (b) is prohibited from making any further purchases of timber from any such lands for a period of five years.

(d) The commission may adopt appropriate regulations to prevent the substitution of timber from lands under its jurisdiction for timber exported from private timberlands.

SEC. 177. Section 6230 of the Public Resources Code is amended to read:

6230. An amount specified in the annual Budget Act shall be available for distribution for public and private higher education for use as up to two-thirds of the local matching share for projects under the National Sea Grant College and Program Act of 1966 (P.L. 89-688) approved, upon the recommendation of the advisory panel appointed pursuant to Section 6232, by the Secretary of the Resources Agency or the secretary's designee.

SEC. 178. Section 6231 of the Public Resources Code is amended to read:

6231. There shall be a Sea Grant Advisory Panel consisting of 17 members as provided in Sections 6232, 6233, and 6234. The advisory panel shall do all of the following:

(a) Review all applications for funding under this section and make recommendations based upon the priorities it establishes.

(b) Periodically review progress on sea grant research projects subsequent to their approval and funding under this chapter.

(c) Make recommendations to the Secretary of the Resources Agency with respect to the implementation of this section.

SEC. 179. Section 6477 of the Public Resources Code is amended to read:

6477. The State Lands Commission shall report quarterly to the Teachers' Retirement Board and annually to the Legislature and the Governor on the following:

(a) The management of school and lieu lands.

(b) Waivers, suspensions, reductions, alterations, or amendments made by the commission pursuant to Section 6916, together with the reasons therefor.

(c) The commission shall file a report with the Legislature annually on all waivers, suspensions, reductions, alterations, or amendments

made by the commission pursuant to this section, together with the reasons therefor.

SEC. 180. Section 6916 of the Public Resources Code is amended to read:

6916. (a) The commission may issue leases for direct heat application of geothermal resources for nonelectrical purposes for a royalty of less than 10 percent of gross revenue if it determines that such a royalty would be in the best interests of the state.

(b) The commission may also waive, suspend, or reduce the rental or minimum royalty for the lands included in any permit or lease, or any portion thereof, and waive, suspend, alter, or amend the operating requirements contained in the lease or regulations adopted pursuant to this section affecting operations of the lease or permit, in the interests of conservation, and to encourage the greatest ultimate recovery of geothermal resources if the commission determines that the action is necessary or beneficial to promote development or finds that the permit or lease cannot be successfully operated under the permit or lease terms or under the regulations.

SEC. 181. Section 9756 of the Public Resources Code is repealed.

SEC. 182. Section 14314 of the Public Resources Code is amended to read:

14314. (a) On and after July 1, 1994, to further long-term strategic planning, the development of performance measures, operational and administrative efficiency and flexibility, and commitment to quality improvement, the corps shall be designated by the Department of Finance as a performance budget department whose annual budget shall take the form of a budget contract between the Legislature and the corps.

(b) The Legislature hereby requests the Governor to issue an Executive order establishing performance goals for the corps, by which the Legislature may evaluate a proposed corps contract, and that the Executive order includes such goals as increasing the number of corpsmembers, increasing the number of corpsmember hours dedicated to public service conservation work and emergency response, and developing specific and quantifiable measures of the corps' success.

SEC. 183. Section 14537 of the Public Resources Code is amended to read:

14537. The department shall keep accurate books, records, and accounts of all of its dealings, and these books, records, and accounts are subject to an annual audit by an auditing firm selected by the department. The auditing firm or the department shall also conduct a selective audit of entities making payments to, or receiving payments from, the department to determine whether redemption payments and applicable processing fees are being paid to the department on all beverage containers sold in California, and that refund values and processing

payments are being paid out properly by the department. The audit shall be made a part of an annual report, copies of which shall be submitted to the Governor and the Legislature, by January 1 of each year.

SEC. 184. Section 19524 of the Public Resources Code is repealed.

SEC. 185. Section 22052 of the Public Resources Code is repealed.

SEC. 186. Section 25310.5 of the Public Resources Code is repealed.

SEC. 187. Section 25403.5 of the Public Resources Code is amended to read:

25403.5. The commission shall, by July 1, 1978, adopt standards by regulation for a program of electrical load management for each utility service area. In adopting the standards, the commission shall consider, but need not be limited to, the following load management techniques:

(1) Adjustments in rate structure to encourage use of electrical energy at off-peak hours or to encourage control of daily electrical load. Compliance with such changes in rate structure shall be subject to the approval of the Public Utilities Commission in a proceeding to change rates or service.

(2) End use storage systems which store energy during off-peak periods for use during peak periods.

(3) Mechanical and automatic devices and systems for the control of daily and seasonal peakloads.

The standards shall be cost-effective when compared with the costs for new electrical capacity, and the commission shall find them to be technologically feasible. Any expense or any capital investment required of a utility by the standards shall be an allowable expense or an allowable item in the utility rate base and shall be treated by the Public Utilities Commission as such in a rate proceeding.

The commission may determine that one or more of such techniques are infeasible and may delay their adoption. If the commission determines that any techniques are infeasible to implement, it shall make a finding in each instance stating the grounds upon which the determination was made and the actions it intends to take to remove the impediments to implementation.

The commission may also grant, upon application by a utility, an exemption from the standards or a delay in implementation. The grant of an exemption or delay shall be accompanied by a statement of findings by the commission indicating the grounds for the exemption or delay. Exemption or delay shall be granted only upon a showing of extreme hardship, technological infeasibility, lack of cost-effectiveness, or reduced system reliability and efficiency.

This section does not apply to proposed sites and related facilities for which a notice of intent or an application requesting certification has

been filed with the commission prior to the effective date of the standards.

SEC. 189. Section 31108 of the Public Resources Code is amended to read:

31108. Commencing on January 2, 1980, and every third year thereafter, the conservancy shall prepare and submit to the Governor and to the Legislature a report describing progress in achieving the objectives of this division. The report shall include the following:

(a) An evaluation of the effectiveness of the conservancy's programs in preserving agricultural lands, restoring coastal habitat, providing public access to the coastline, and in undertaking other functions prescribed in this division.

(b) Identification of additional funding, legislation, or other resources required to more effectively carry out the objectives of this division.

(c) A discussion of its progress in addressing the goals, priority areas, and concerns referenced in subdivision (a) of Section 31163, including, but not limited to, any funds that are received or disbursed for purposes related to addressing those goals, priority areas, and concerns.

SEC. 190. Section 31163 of the Public Resources Code is amended to read:

31163. (a) The conservancy shall cooperate with cities, counties, and districts, the bay commission, other regional governmental bodies, nonprofit land trusts, nonprofit landowner organizations, and other interested parties in identifying and adopting long-term resource and outdoor recreational goals for the San Francisco Bay area, which shall guide the ongoing activities of the San Francisco Bay Area Conservancy Program. The conservancy shall utilize the list of priority areas and concerns established by the bay commission pursuant to subdivision (b) of Section 31056 as guidance in the selection of those San Francisco area projects that are within the jurisdiction of the bay commission. However, the guidance provided by the bay commission is advisory and the conservancy shall have the responsibility for making program decisions. Any acquisition of real property using funds authorized pursuant to this chapter shall be from willing sellers if the land is actively farmed or ranched. Any acquisition of real property by the conservancy pursuant to this chapter shall be from willing sellers.

(b) The conservancy shall participate in and support interagency actions and public/private partnerships in the San Francisco Bay area for the purpose of implementing subdivision (a), and providing for broad-based local involvement in, and support for, the San Francisco Bay Area Conservancy Program.

(c) The conservancy shall utilize the criteria specified in this subdivision to develop project priorities for the San Francisco Bay Area

Conservancy Program that provide for development and acquisition projects, urban and rural projects, and open-space and outdoor recreational projects. The conservancy shall give priority to projects that, to the greatest extent, meet the following criteria:

(1) Are supported by adopted local or regional plans.

(2) Are multijurisdictional or serve a regional constituency.

(3) Can be implemented in a timely way.

(4) Provide opportunities for benefits that could be lost if the project is not quickly implemented.

(5) Include matching funds from other sources of funding or assistance.

SEC. 191. Section 42005 of the Public Resources Code is amended to read:

42005. (a) The board shall develop a comprehensive market development plan using existing resources, that will stimulate market demand in the state for postconsumer waste material and secondary waste material generated in the state.

(b) The board's market development plan shall include, but shall not be limited to, achieving all of the following goals:

(1) Increasing market demand for postconsumer waste materials and secondary waste materials available due to California's source reduction and recycling programs.

(2) Increasing demand for recycled content products, especially high quality, value-added products.

(3) Promoting efficient local waste diversion systems which yield high quality, industrially usable feedstocks.

(4) Promoting the competitive collection and use of secondary waste materials.

(c) The board's development plan shall also include efforts to encourage and promote cooperative, regional programs to expand markets for recycled material. These programs shall include activities to address problems and opportunities that are unique to rural, urban, and suburban areas of the state.

(d) The board shall develop a plan, using existing resources, to provide assistance to local agencies when requested by a city, county, or regional agency, in the implementation of cost-effective programs that provide a quality supply of recycled materials for markets.

SEC. 192. Section 42871 of the Public Resources Code is amended to read:

42871. The board shall administer a tire recycling program that promotes and develops alternatives to the landfill disposal of used whole tires.

SEC. 194. Section 71040 of the Public Resources Code is amended to read:

71040. (a) The Secretary for Environmental Protection shall establish permit assistance centers throughout the state to provide businesses and other entities with assistance in complying with laws and regulations implemented by every board, department, and office within the California Environmental Protection Agency. Each permit assistance center shall, to the extent feasible, incorporate permit assistance activities of local and federal entities and of other entities of the state into its operations.

(b) In addition to the centers authorized pursuant to subdivision (a), the secretary shall establish an electronic online permit assistance center through the Internet. The electronic online permit assistance center shall be available for use by any business or other entity subject to a law or regulation implemented by a board, department, or office within the California Environmental Protection Agency, and shall provide a business or other entity with assistance in complying with those laws and regulations. The center, which shall be called the ''California Government-On Line to Desktops'' or ''CALGOLD'' program, shall provide special software, ''hotlinks'' and other online resources and tools that may be used by a business or other entity to streamline and expedite compliance with laws and regulations implemented by a board, department, or office within the California Environmental Protection Agency. The CALGOLD program shall, to the extent feasible, incorporate permit assistance activities of local and federal entities and of other entities of the state into its operations.

(c) The Secretary for Environmental Protection shall report annually, no later than December 1 with respect to the previous fiscal year, to the Governor and the Legislature on the number of permits issued, expedited, or otherwise streamlined by each center; the number and types of businesses assisted by each center; and how the assistance provided to businesses has improved environmental protection. The secretary, in consultation with the Secretary of the Trade and Commerce Agency, shall report on the permit assistance activities of both agencies and shall make recommendations to ensure that these activities are coordinated and nonduplicative.

SEC. 195. Section 383 of the Public Utilities Code is amended to read:

383. Moneys collected pursuant to paragraph (3) of subdivision (b) of Section 381 shall be transferred to a subaccount of the Energy Resources Programs Account of the California Energy Resources Conservation and Development Commission to be held until further action by the Legislature for purposes of:

(a) Supporting the operation of existing and the development of new and emerging in-state renewable resource technologies.

(b) Supporting the operations of existing renewable resource generation facilities which provide fire suppression benefits, reduce materials going into landfills, and mitigate the amount of open-field burning of agricultural waste.

(c) Supporting the operations of existing, innovative solar thermal technologies that provide essential peak generation and related reliability benefits.

SEC. 196. Section 398.5 of the Public Utilities Code is amended to read:

398.5. (a) Retail suppliers that disclose specific purchases pursuant to Section 398.4 shall report on March 1, 1999, and annually thereafter, to the California Energy Resources Conservation and Development Commission, for each electricity offering, for the previous calendar year each of the following:

(1) The kilowatthours purchased, by generator and fuel type during the previous calendar year, consistent with the meter data, including losses, reported to the system operator.

(2) For each electricity offering the kilowatthours sold at retail.

(3) For each electricity offering the disclosures made to consumers pursuant to Section 398.4.

(b) Information submitted to the California Energy Resources Conservation and Development Commission pursuant to this section that is a trade secret as defined in subdivision (d) of Section 3426.1 of the Civil Code shall not be released except in an aggregated form such that trade secrets cannot be discerned.

(c) On or before January 1, 1998, the California Energy Resources Conservation and Development Commission shall specify guidelines and standard formats, based on the requirements of this article and subject to public hearing, for the submittal of information pursuant to this article.

(d) In developing the rules and procedures specified in this section, the California Energy Resources Conservation and Development Commission shall seek to minimize the reporting burden and cost of reporting that it imposes on retail suppliers.

(e) On or before October 15, 1999, and annually thereafter, the California Energy Resources Conservation and Development Commission shall issue a report comparing information available pursuant to Section 398.3 with information submitted by retail suppliers pursuant to this section, and with information disclosed to consumers pursuant to Section 398.4. This report shall be forwarded to the California Public Utilities Commission.

(f) Beginning April 15, 1999, and annually thereafter, the California Energy Resources Conservation and Development Commission shall issue a report calculating net system power. The California Energy

Resources Conservation and Development Commission will establish the generation mix for net generation imports delivered at interface points and metered by the system operators. The California Energy Resources Conservation and Development Commission shall issue an initial report calculating preliminary net system power for calendar year 1997 on or before January 1, 1998. This report shall be updated on or before October 15, 1998.

(g) The provisions of this section shall not apply to generators providing electric service onsite, under an over-the-fence transaction as described in Section 218, or to an affiliate or affiliates, as defined in subdivision (a) of Section 372.

(h) The California Energy Resources Conservation and Development Commission may verify the veracity of environmental claims made by retail suppliers.

SEC. 197. Section 495.7 of the Public Utilities Code is amended to read:

495.7. (a) The commission may, by rule or order, establish procedures to allow telephone or telegraph corporations to apply for the exemption of certain telecommunications services from the tariffing requirements of Sections 454, 489, 491, and 495.

(b) The commission may, by rule or order, partially or completely exempt certain telecommunications services, except basic exchange service offered by telephone or telegraph corporations, from the tariffing requirements of Sections 454, 489, 491, and 495 if either of the following conditions is met:

(1) The commission finds that the telephone corporation lacks significant market power in the market for that service for which an exemption from Sections 454, 489, 491, and 495 is being requested. Criteria to determine market power shall include, but not be limited to, the following: company size, market share, and type of service for which an exemption is being requested. The commission shall promulgate rules for determining market power based on these and other appropriate criteria.

(2) The Commission finds that a telephone corporation is offering a service in a given market for which competitive alternatives are available to most consumers, and the commission has determined that sufficient consumer protections exist in the form of rules and enforcement mechanisms to minimize the risk to consumers and competition from unfair competition or anticompetitive behavior in the market for the competitive telecommunications service for which a provider is requesting an exemption from Sections 454, 489, 491, and 495. This paragraph does not apply to monopoly services for which the commission retains exclusive authority to set or change rates.

(c) Before implementing procedures to allow telephone corporations to apply for the exemption of certain telecommunications services from the tariffing requirements of Sections 454, 489, 491, and 495, and no later than September 30, 1996, the commission shall establish consumer protection rules for those exempted services that include, but are not limited to:

(1) Rules regarding the availability of rates, terms, and conditions of service to consumers.

(2) Rules regarding notices to consumers of rate increases and decreases, changes in terms and conditions of service, and change of ownership.

(3) Rules to identify and eliminate unacceptable marketing practices including, but not limited to, fraudulent marketing practices.

(4) Rules to assure that aggrieved consumers have speedy, low-cost, and effective avenues available to seek relief in a reasonable time.

(5) Rules to assure consumers that their right to informational privacy for services over which the commission has oversight.

(6) Rules to assure a telephone corporation's cooperation with the commission investigations of customer complaints.

(d) Prior to granting every exemption from the tariffing requirements of Sections 454, 489, 491, and 495, the commission shall find that there is no improper cross-subsidization or anticompetitive behavior in connection with the service for which an exemption is requested.

(e) Nothing in this section shall require that the commission exempt any telecommunications service or telecommunications service provider from the requirements of Sections 454, 489, 491, and 495, nor shall this section limit the authority of the commission to require telephone corporations to provide it with contemporaneous information about the current terms, conditions, and prices under which telecommunications services that are exempted, in whole or in part, from Sections 454, 489, 491, and 495 are being offered to subscribers.

(f) The commission, after notice and hearing if requested, may cancel, revoke, or suspend any exemption granted under subdivision (b) to any telephone corporation that fails to comply with any of the rules established by the commission pursuant to subdivision (c).

(g) Any telecommunications service exempted from the tariffing requirements of Sections 454, 489, 491, and 495 shall not be subject to the limitation on damages that applies to tariffed telecommunications services.

(h) The provisions of this section do not apply to commercial mobile services as defined by the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66).

SEC. 198. Section 739.3 of the Public Utilities Code is amended to read:

739.3. (a) The commission shall develop, implement, and maintain a suitable program to establish a fair and equitable local rate structure aided by transfer payments to small independent telephone corporations serving rural and small metropolitan areas. The purpose of the program shall be to promote the goals of universal telephone service and to reduce any disparity in the rates charged by those companies.

(b) For purposes of this section, small independent telephone corporations means those independent telephone corporations serving rural areas, as determined by the commission.

(c) The commission shall develop, implement, and maintain a suitable, competitively neutral, and broadbased program to establish a fair and equitable local rate support structure aided by transfer payments to telephone corporations serving areas where the cost of providing services exceeds rates charged by providers, as determined by the commission. The commission shall develop and implement the program on or before October 1, 1996. The purpose of the program shall be to promote the goals of universal telephone service and to reduce any disparity in the rates charged by those companies. The commission shall structure the program required by this subdivision so that the amount of each transfer payment reasonably equals the value of the benefits of universal service to the transferor entity and its subscribers. Except as otherwise explicitly provided, this subdivision does not limit the manner in which the commission collects and disburses funds, and does not limit the manner in which it may include or exclude the revenue of transferring entities in structuring the program.

(d) The commission shall investigate subsidy reduction, or elimination of subsidies in service areas with demonstrated competition.

(e) Not later than February 1, 2001, the Legislative Analyst shall conduct a review of the state's universal telephone service program, including subsequent modifications as appropriate, and report to the Governor and the Legislature as part of the Legislative Analyst's analysis of the Budget Bill to be issued in February 2001. In evaluating the program, the Legislative Analyst shall consider all of the following:

(1) The findings of the report required by subdivision (e).

(2) An assessment of whether any identified problems are issues that affect the continued implementation of this chapter or issues that warrant revisions of statutes or regulations.

(f) This section shall remain in effect until January 1, 2005, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends that date.

SEC. 199. Section 28767.3 of the Public Utilities Code is amended to read:

28767.3. Not later than October 12, 1974, the board shall adopt an affirmative action program approved by the Office of Federal Contract Compliance of the Department of Labor.

SEC. 200. Section 130292 of the Public Utilities Code is amended to read:

130292. (a) The project shall be coordinated by the statutorily created county transportation commission in whose jurisdiction the project is located. The county transportation commission shall consult with local traffic and law enforcement agencies, the Department of Transportation, and the Department of the California Highway Patrol on all aspects of the project in order to provide necessary coordination of the project with existing plans and programs.

(b) The county transportation commission shall make preliminary and final results of the demonstration project available to state and local public agencies for possible application throughout the state.

(c) The county transportation commission shall prepare and transmit to the Legislature, no later than one year after the completion of the project, a report of its findings, conclusions, and recommendations.

(d) The Department of Transportation shall reimburse the county transportation commission, from funds appropriated for projects pursuant to this article, for the costs incurred by the commission under this article.

(e) No money from the General Fund shall be used for the operation of a smart freeway corridor telecommunications project established as a demonstration project pursuant to this article after the demonstration project is completed.

SEC. 201. Section 132410 of the Public Utilities Code is amended to read:

132410. (a) The authority has all of the powers necessary for planning, acquiring, leasing, developing, jointly developing, owning, controlling, using, jointly using, disposing of, designing, procuring, and building the project, including, but not limited to, all of the following:

(1) Acceptance of grants, fees, and allocations from the state, local agencies, and private entities.

(2) Acquiring, through purchase or through eminent domain proceedings, any property necessary for, incidental to, or convenient for, the exercise of the powers of the authority.

(3) Incurring indebtedness, secured by pledges of revenue available for project completion.

(4) Contracting with public and private entities for the planning, design, and construction of the project. These contracts may be assigned separately or may be combined to include any or all tasks necessary for completion of the project.

(5) Entering into cooperative or joint development agreements with local governments or private entities. These agreements may be entered into for the purpose of sharing costs, selling or leasing land, air, or development rights, providing for the transferring of passengers, making pooling arrangements, or for any other purpose that is necessary for, incidental to, or convenient for the full exercise of the powers granted the authority. For purposes of this paragraph, ''joint development'' includes, but is not limited to, an agreement with any person, firm, corporation, association, or organization for the operation of facilities or development of projects adjacent to, or physically or functionally related to, the project.

(6) Relocation of utilities, as necessary for completion of the project.

(b) The duties of the authority include, but are not limited to, all of the following:

(1) Conducting the financial studies and the planning and engineering necessary for completion of the project.

(2) (A) Adoption of an administrative code, not later than 60 days after establishment of the authority, for administration of the authority in accordance with any applicable laws, including, but not limited to, the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), contracting and procurement laws, laws relating to contracting goals for minority and women business participation, and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(B) (i) The administrative code adopted under subparagraph (A) shall include a code of conduct for employees and board members that is consistent with Sections 84308 and 87103 of the Government Code and prohibits board members and staff from accepting gifts valued at ten dollars ($10) or more from contractors, potential contractors, or their subcontractors.

(ii) The code shall require the disclosure, on the record, of the proceedings by the officer of the agency who receives a contribution within the preceding 24 months in an amount of more than two hundred fifty dollars ($250) from a party or participant to a proceeding, and the disclosure by the party or participant.

(iii) The code shall provide that no officer of the agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding, as described in Section 84308 of the Government Code, if the officer has willfully or knowingly received a contribution in the amount of more than two hundred fifty dollars ($250) within the preceding 24 months from a party or his or her agent, or from any participant or his or her agent if the participant has a financial interest in the decision.

(iv) Any officer deemed ineligible to participate in a proceeding due to the provisions of this code of conduct may be replaced for the purposes of that proceeding by an appointee chosen by the appropriate appointing authority.

(v) Under the code of conduct, board members shall be deemed to have a financial interest in a decision within the meaning of Section 87100 of the Government Code if the decision involves the donor of, or intermediary or agent for a donor of, a gift or gifts aggregating ten dollars ($10) or more in value within the 12 months prior to the time the decision was made.

(c) The authority shall make reasonable progress, as determined by the commission, in the design and construction of the project within the timetable imposed under the 1998 State Transportation Improvement Program.

SEC. 203. Section 7273 of the Revenue and Taxation Code is amended to read:

7273. In addition to the amounts otherwise provided for preparatory costs, the board shall charge an amount for its services in administering the transactions and use tax determined by the board, with the concurrence of the Department of Finance, as follows:

(a) Beginning with the 1993–94 fiscal year, the amount charged shall be based on the total special taxing jurisdiction costs reflected in the annual Budget Act. This amount comprises the categories of direct, shared, and central agency costs incurred by the board and shall include the following:

(1) The amount charged to each entity shall be based on the recommendations incorporated in the March 1992, report by the Auditor General entitled ''The Board of Equalization Needs To Adjust Its Model For Setting Reimbursement Rates For Special Tax Jurisdictions.''

(2) The amount charged may be adjusted in the current fiscal year to reflect the difference between the board's budgeted costs and any significant revised estimate of costs. Any adjustment shall be subject to budgetary controls included in the Budget Act. Prior to any adjustment, the Department of Finance shall notify the Chairperson of the Joint Legislative Budget Committee not later than 30 days prior to the effective date of the adjustment.

(3) For the 1995–96 fiscal year and each fiscal year thereafter, the amount charged shall be adjusted to reflect the difference between the board's recovered costs and the actual costs incurred by the board during the fiscal year two years prior.

(b) The board shall, by June 1 of each year, notify districts of the amount that it anticipates will be assessed for the next fiscal year. The districts shall be notified of the actual amounts that will be assessed within 30 days after enactment of the Budget Act for that fiscal year.

(c) The amount charged a transactions and use tax district that becomes operative during the fiscal year shall be estimated for that fiscal year based on that district's proportionate share of direct, indirect, and shared costs.

(d) The amounts determined by subdivision (a) shall be deducted in equal amounts from the quarterly allocation of taxes collected by the board for a given district.

(e) For the 1998–99 fiscal year and each fiscal year thereafter, the amount charged to a district by the board shall not exceed the lesser of the amount as a percentage of revenue the board would have charged for the 1998–99 fiscal year, or the first full year of a new district's operations under this section as it read prior to the amendments made by the act adding this subdivision, or the following percentages:

(1) For districts imposing a transactions and use tax of one-half of 1 percent or greater, the amount charged by the board shall not exceed 1.5 percent, for the 1998–99 fiscal year and each fiscal year thereafter.

(2) Beginning with the 1998–99 fiscal year and in each fiscal year thereafter, the amount charged to a district imposing a transactions and use tax ranging from one-quarter of 1 percent up to but less than one-half of 1 percent shall not exceed 3 percent.

(3) Beginning with the 1998–99 fiscal year and in each fiscal year thereafter, the amount charged to a district imposing a transactions and use tax below one-quarter of 1 percent shall not exceed 5 percent.

SEC. 205. Section 100 of the Streets and Highways Code is amended to read:

100. Using existing resources, the department shall monitor the cumulative impact of fragmented gaps in the state highway system to identify safety and long-term maintenance issues.

SEC. 206. Section 1965 of the Streets and Highways Code is repealed.

SEC. 207. Section 30796.9 of the Streets and Highways Code is amended to read:

30796.9. (a) The San Diego Association of Governments shall deposit thirty-three million dollars ($33,000,000) in the Toll Bridge Seismic Retrofit Account in the State Transportation Fund.

(b) Maintenance of the San Diego-Coronado Bridge shall be funded by the state pursuant to Section 188.4.

(c) Of the thirty-three million dollars ($33,000,000) in local funds to be paid by the San Diego Association of Governments as the local toll authority for the San Diego-Coronado Bridge, not less than ten million dollars ($10,000,000) shall be paid from local toll revenue reserve funds. The balance of funds shall be paid from toll bridge revenue bonds, as specified in Section 30796.10, supported by toll revenue. This revenue shall consist of the net toll revenue gained from shifting the cost of

bridge maintenance to be funded by the state pursuant to Section 188.4 and by all or part of the remaining toll revenues.

SEC. 208. Section 30895 of the Streets and Highways Code is repealed.

SEC. 209. Section 30950.3 of the Streets and Highways Code is amended to read:

30950.3. (a) The authority, with the concurrence of the department, shall prepare and adopt a long-range plan for the completion of all projects identified in subdivisions (a), (c), and (d) of Section 30913 and in subdivision (a) of Section 30914.

(b) The authority shall not allocate any toll revenues for any capital improvement projects, except those projects included in the long-range plan required under subdivision (a) and those projects funded pursuant to Article 3.5 (commencing with Section 30880) of Chapter 3.

(c) The authority shall give first priority to projects and expenditures that are deemed necessary by the department to preserve and protect the bridge structures.

SEC. 210. Section 30961 of the Streets and Highways Code is amended to read:

30961. Toll bridge revenue bonds shall be issued pursuant to a resolution adopted at any time, and from time to time, by the authority by a majority vote of all members of the authority.

(a) The authority may from time to time issue bonds in accordance with the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), for the purpose of constructing, improving, or equipping any of the bridges or for any of the purposes authorized by this chapter, Chapter 4 (commencing with Section 30910), or Chapter 4.5 (commencing with Section 31000). Operation of the bridges or any grouping or units thereof shall constitute an ''enterprise'' within the meaning of Section 54309 of the Government Code, and the authority shall constitute a ''local agency'' within the meaning of Section 54307 of the Government Code. Article 3 (commencing with Section 54380) of Chapter 6 of Part 1 of Division 2 of Title 5 of the Government Code shall not apply to the issuance and sale of bonds pursuant to this chapter. Instead, the authority shall authorize the issuance of bonds by resolution, and that resolution shall specify all of the following:

(1) The purposes for which the bonds are to be issued.

(2) The maximum principal amount of the bonds.

(3) The maximum term for the bonds or commercial paper.

(4) The maximum rate of interest to be payable upon the bonds or commercial paper. That interest rate shall not exceed the maximum rate specified in Section 53531 of the Government Code. The rate may be

either fixed or variable and shall be payable at the times and in the manner specified in the resolution.

(b) The authority shall keep full, complete, and separate accounts of each toll bridge and shall annually prepare balance sheets and income and profit and loss statements showing the financial condition of each toll bridge.

SEC. 211. Section 1088.7 of the Unemployment Insurance Code is repealed.

SEC. 212. Section 1274.05 of the Unemployment Insurance Code is repealed.

SEC. 213. Section 5007 of the Unemployment Insurance Code is amended to read:

5007. A registrant certified by the SAU pursuant to Section 11300 of the Welfare and Institutions Code shall accept assignment to employment or WIN training as determined appropriate by the department or face deregistration action. The following standards shall be met before the department requires any such individual to accept a work or training assignment:

(a) All assignments for those in WIN training shall be within the scope of an individual's employability plan. This plan may be modified to reflect changed employment conditions.

(b) To the extent permitted by federal law, an Aid to Families with Dependent Children—Family Group recipient who is required to register for the WIN program because he or she is enrolled in school for at least 12 units of credit shall be deemed unsuitable for participation in the WIN program components such as community work experience and job training, as long as the recipient's youngest child is under six years old and the program confers a post secondary degree, vocational certificate, or high school diploma.

(c) The job or training assignment shall be related to the capability of the individual to perform the task on a regular basis. Any claim of adverse effect on physical or mental health shall be based on an adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health.

(d) The total daily commuting time to and from home to the work or training site to which the individual is assigned shall not normally exceed two hours, not including the transporting of a child to and from a child care facility, unless a longer commuting distance and time is generally accepted in the community, in which case the round trip commuting time shall not exceed the generally accepted community standards.

(e) When child care is required, it shall meet the standards specified in applicable federal law and shall be available during the hours the

individual is engaged in a WIN component or manpower activity, plus any additional necessary commuting time.

(f) The work or training site to which the individual is assigned shall not be in violation of applicable federal, state, and local health and safety standards.

(g) Assignments shall not be made which are discriminatory in terms of age, sex, race, creed, color, or national origin.

(h) The individual shall not be referred to work or training unless supportive and manpower services necessary for participation are available. The cessation or withdrawal of such necessary services while the individual is in a WIN component shall constitute good cause for refusal to participate.

(i) The quality of the training shall meet local employers' requirements so that the individual will be in a competitive position within the local labor market. The training shall also be likely to lead to employment which will meet the appropriate work criteria.

SEC. 214. Section 5202 of the Unemployment Insurance Code is repealed.

SEC. 215. Section 9614 of the Unemployment Insurance Code is repealed.

SEC. 216. Section 9616 of the Unemployment Insurance Code is amended to read:

9616. (a) The department, in coordination with the United States Department of Defense and the various branches of the military of the United States, shall determine which military occupational specialties have civilian counterpart jobs that require licensure by state or local agencies.

(b) The department shall further determine, to the degree possible, if any procedural, financial, technological, educational, or bureaucratic barriers exist that impede military personnel reentering the civilian workforce from acquiring these licenses.

(c) The department shall implement this section only to the extent federal funds are available for the costs of implementation.

SEC. 217. Section 9616.1 of the Unemployment Insurance Code is amended to read:

9616.1. (a) The department shall convene groups that represent local department field offices, county welfare departments, service delivery areas, and community colleges for the purpose of developing a local plan on how these entities will regularly coordinate employer outreach activities and the solicitation of entry-level and other job listings, in order to reduce duplication of effort and to enhance the overall job development activities in each county. Each local plan shall be signed by the local entities convened pursuant to this subdivision and submitted to the department.

(b) The entities involved in formulating each local plan and the department shall review each plan on at least an annual basis.

SEC. 218. Section 9616.5 of the Unemployment Insurance Code is repealed.

SEC. 219. Section 10522 of the Unemployment Insurance Code is repealed.

SEC. 220. Section 10532 of the Unemployment Insurance Code is amended to read:

10532. (a) The California Occupational Information Coordinating Committee shall develop and annually revise a plan for the use of available resources to design and implement a statewide comprehensive labor market and occupational supply and demand information system as specified in Section 1535 of Title 29 of the United States Code. The plan shall be submitted to the California Workforce Investment Board no later than May 1 of each year. The plan and the comments by the board shall be submitted to the Governor and the Legislature no later than June 30 of each year.

(b) The plan shall, at the minimum, include the following:

(1) The proposed design of a labor market and occupational supply and demand information system for this state, meeting the requirements of Section 1535 of Title 29 of the United States Code.

(2) Proposed activities in implementing the labor market and occupational supply and demand information system for the fiscal year.

(3) The amount and proposed use of each funding source available for the labor market and occupational supply and demand information system.

(c) The California Occupational Information Coordinating Committee shall seek and obtain funds or in-kind contributions to the maximum extent possible from the National Occupational Information Coordinating Committee and other federal, state, and private sources, and may accept and use any such funds or in-kind contributions for the purposes of this section.

(d) The California Occupational Information Coordinating Committee shall act as an advisory body to the Employment Development Department in the department's operation of the State-Local Cooperative Labor Market Information Program.

SEC. 221. Section 15037 of the Unemployment Insurance Code is amended to read:

15037. The California Workforce Investment Board shall:

(a) Review and comment on the state workforce development plan developed pursuant to Section 11011.

(b) Develop and recommend to the Governor a coordination and special services plan, which includes a dislocated workers assistance

plan, in accordance with Chapter 4.5 (commencing with Section 10510) of Part 1 of Division 3.

(c) Recommend to the Governor local service delivery areas. To the extent permitted by federal law, designation of service delivery areas shall reflect the intent of the Legislature to integrate and coordinate employment and training services, public assistance programs, and other educational and training efforts as may exist which are designed to assist individuals in preparing for participation in the labor force.

(d) To the extent permitted by federal law, establish policies which shall be followed by the department in performing all of the following functions:

(1) Approval of local service delivery area plans.

(2) Establishment of standards, criteria, and reporting requirements established by the department pursuant to this division with respect to local service delivery area plans.

(3) Allocation of funds for local service delivery area plans, including funds for plans submitted under Chapter 7.5 (commencing with Section 15075).

(e) Plan, review and approve the allocation, recapture, and reallocation of federal funds received by the state pursuant to the federal Job Training Partnership Act. Funds received by the state in accordance with Sections 202(c)(1)(C) and 262 (c)(1)(C) of that act shall be allocated to the Superintendent of Public Instruction as necessary to meet the need determined by the superintendent pursuant to Section 33117.5 of the Education Code. The board shall be deemed to have approved the disbursement of funds when the Governor approves a decision of the board specifying a budget for an authorized program or activity and designating the department or agency responsible for the expenditure of the budgeted funds. An agreement shall be entered into between the Employment Development Department and the State Department of Education and shall provide that Job Training Partnership Act funds provided for the purposes of Section 33117.5 of the Education Code shall be utilized for payment to local educational agencies.

(f) Review and approve the annual labor market and occupational supply and demand information plan developed pursuant to Section 10532.

(g) Consider and advise the director on all matters connected with the administration of this code as submitted to it by the director, and may upon its own initiative recommend changes in administration as it deems necessary.

(h) Review and comment to the Governor and the Legislature on the annual report prepared in accordance with Section 15064.

(i) Serve as the body responsible for making recommendations to the Governor when the director proposes to withdraw funding pursuant to Section 15028.

SEC. 222. Section 15076.5 of the Unemployment Insurance Code is amended to read:

15076.5. The California Workforce Investment Board shall do all of the following:

(a) Be the lead state agency to establish policies for:

(1) Alleviating adverse conditions that might cause plant closures and, where closures are unavoidable, assisting local efforts to secure alternative employment and retraining opportunities for displaced workers.

(2) Marshaling available state and federal resources to aid workers and communities affected by major plant closures and to foster long-term economic vitality, industrial growth, and job opportunities.

(3) Integrating appropriate activities of the Trade and Commerce Agency, the Employment Development Department, the Employment Training Panel, the Department of Industrial Relations, the State Department of Education, the Chancellor's Office of the California Community Colleges, and the Governor's Office of Planning and Research with the State Dislocated Worker Unit.

(4) Collection of data and preparation of economic analyses and reporting, intended to provide better and more detailed assessments of future trends within the industrial, commercial, and agricultural sectors of the economy.

(b) Review and comment on the plans for displaced worker assistance programs submitted pursuant to Section 15076.

(c) Recommend to the Governor necessary components of state plans under the jurisdiction of other state offices, departments, or agencies that administer programs appropriate for coordination with dislocated worker assistance programs authorized by this chapter.

(d) Review and make recommendations to the Governor and the Legislature regarding changes needed in current federal and state statutes and programs in order to minimize adverse consequences of plant closures and promote rapid reemployment of workers and revitalization of communities.

SEC. 223. Section 17002 of the Unemployment Insurance Code is amended to read:

17002. In carrying out the provisions of this division, the department shall conduct activities including, but not limited to, the following:

(a) Establish a council of corporate executives consisting of 13 members drawn from the business community including, but not limited to, retired or former chief executive officers of major California

corporations. Seven members shall be appointed by the Governor, three shall be appointed by the Senate Committee on Rules, and three shall be appointed by the Speaker of the Assembly. Appointments shall be made no later than January 31, 1998. This council shall provide ongoing advice and assistance to the department in recruiting private employers to hire recipients of aid.

(b) In consultation with the council described in subdivision (a), establish a clearinghouse for information on the Internet or other forms of toll-free communication for private sector employers to obtain information about assistance and resources for hiring CalWORKs recipients and to register their pledges to assist the state in finding the jobs necessary to meet the local welfare-to-work goals throughout the state.

(c) In consultation with the council described in subdivision (a), provide a forum for leaders in the faith-based communities, as well as other civic leaders, to assist the state in promoting welfare-to-work goals as part of the civic duty of their constituents.

SEC. 224. Section 1810.7 of the Vehicle Code is amended to read:

1810.7. (a) Except as provided in Sections 1806.5, 1808.2, 1808.4, 1808.5, 1808.7, and 1808.21, the department may, by special permit, authorize any person to access the department's electronic data base, as provided for in this section, for the purpose of obtaining vehicle registration information for commercial use.

(b) The department may limit the number of permits issued under this section, and may restrict, or establish priority for, access to its files as the department deems necessary to avoid disruption of its normal operations, or as the department deems is in the best interest of the public.

(c) The department may establish minimum volume levels, audit and security standards, and technological requirements, or any terms and conditions it deems necessary for the permits.

(d) As a condition of issuing a permit pursuant to this section, the department shall require each direct-access permittee to file a performance bond or other financial security acceptable to the department, in an amount the department deems appropriate.

(e) The department shall charge fees for direct-access service permits, and shall charge fees pursuant to Section 1811 for any information copied from the files.

(f) The department shall ensure that information provided pursuant to this section includes only the public portions of records.

(g) The director shall, on and after January 1, 1992, report every three years to the Legislature on the implementation of this section. The report shall include the number and location of direct-access permittees, the volume and nature of direct-access inquiries, procedures the department

has taken to ensure the security of its files, and the costs and revenues associated with the project.

(h) The department shall establish procedures to ensure confidentiality of any records of residence addresses and mailing addresses as required by Sections 1808.21, 1808.22, 1808.45, 1808.46, and 1810.2.

SEC. 226. Section 2936 of the Vehicle Code is repealed.

SEC. 227. Section 5023 of the Vehicle Code is amended to read:

5023. (a) Any person described in Section 5101 may also apply for a set of commemorative Olympic reflectorized license plates and the department shall issue those special license plates in lieu of regular license plates. The commemorative Olympic reflectorized license plates shall be of a distinctive design and shall be available in a special series of letters or numbers, or both, as determined by the department after consultation with the United States Olympic Committee.

(b) In addition to the regular fees for an original registration or renewal of registration, the following special fees shall be paid:

(1) Fifty dollars ($50), inclusive of any administrative fees, for the initial issuance of the special plates.

(2) Fifteen dollars ($15) for the transfer of the special plates to another vehicle.

(3) Thirty-five dollars ($35) for duplicate, replacement commemorative Olympic reflectorized license plates of the same number in the series.

(4) Thirty dollars ($30) for the annual renewal of the special plates.

(c) When payment of renewal fees is not required as specified in Section 4000, or when the person determines to retain the plates upon sale, trade, or other release of the vehicle upon which the special plates have been displayed, the person shall notify the department and the person may retain the special plates.

(d) All revenue derived from the additional special fees provided in this section, less costs incurred by the department pursuant to this section, shall be deposited in the California Olympic Training Account in the General Fund established pursuant to Section 7592 of the Government Code.

SEC. 228. Section 14602.1 of the Vehicle Code is amended to read:

14602.1. Every state and local law enforcement agency, including, but not limited to, city police departments and county sheriffs' offices, shall report to the Department of the California Highway Patrol, on a form approved by that department, all vehicle pursuit data, which shall include, but not be limited to, all of the following:

(a) Whether any person involved in a pursuit or a subsequent arrest was injured, specifying the nature of that injury.

(b) The violations which caused the pursuit to be initiated.

(c) The identity of the officers involved in the pursuit.

(d) The means or methods used to stop the suspect being pursued.

(e) The charges filed with the court by the district attorney.

SEC. 229. Section 35581 of the Vehicle Code is amended to read:

35581. (a) The Department of Transportation, in cooperation with the Department of the California Highway Patrol, shall develop a plan for implementing or identifying new or existing scale facilities at major intermodal terminals which may serve as intermodal weighing facilities for weighing commercial vehicles which transport intermodal freight, prior to their entry onto any highway which is not specifically exempted from weight limitations by a local authority. The plan shall include consideration of options for financing the construction of required intermodal weighing facilities. The plan shall be submitted to the Legislature not later than August 1, 1989.

(b) The Department of Transportation may enter into agreements with local authorities or private entities to provide for exemption from weight restrictions for short distance movement to an intermodal weighing facility.

SEC. 230. Section 232 of the Water Code is repealed.

SEC. 230.1. Section 8610 of the Water Code is amended to read:

8610. The board shall offer to lease to the Department of Fish and Game, or to an appropriate public resource protection or public conservation agency or organization approved by the Department of Fish and Game and the board, any lands it acquires as replacement habitat as mitigation for adverse environmental impacts of its projects. The lease agreement shall ensure that these lands are managed to provide the mitigation for which they were acquired and shall include, but not be limited to, provisions for funding management of those lands. Funds for management of those lands may include, but are not limited to, funds appropriated by the Legislature to the Department of Water Resources, the Reclamation Board, or the Department of Fish and Game, and funds available from local entities. The lease agreement shall reserve the authority of the board to carry out necessary flood control activities and mitigate adverse environmental impacts.

SEC. 230.2. Section 10010 of the Water Code is repealed.

SEC. 230.3. Section 10756 of the Water Code is repealed.

SEC. 230.4. Section 11156 of the Water Code is repealed.

SEC. 230.5. Section 11912 of the Water Code is amended to read:

11912. The department, in fixing and establishing prices, rates, and charges for water and power, shall include as a reimbursable cost of any state water project an amount sufficient to repay all costs incurred by the department, directly or by contract with other agencies, for the preservation of fish and wildlife and determined to be allocable to the costs of the project works constructed for the development of such water

and power, or either. Costs incurred for the enhancement of fish and wildlife or for the development of public recreation shall not be included in the prices, rates, and charges for water and power, and shall be nonreimbursable costs.

SEC. 230.6. Section 12308 of the Water Code is repealed.

SEC. 230.7. Section 12830 of the Water Code is amended to read:

12830. The department may refuse to make any order for the reallocation of any of the funds if the provisions of this chapter are violated.

SEC. 230.8. Section 12875 of the Water Code is amended to read:

12875. The department may refuse to make any order for the reallocation of any of the funds if the provisions of this chapter are violated.

SEC. 230.9. Section 12879.5 of the Water Code is amended to read:

12879.5. (a) The sum of twenty million dollars ($20,000,000) of the money in the fund shall be deposited in the Local Water Projects Assistance Account and shall be available for loans to local agencies to aid in the construction of eligible projects.

(b) No eligible project may receive more than five million dollars ($5,000,000) in loans from the department.

(c) In the administration of this section, the department and the California Water Commission shall give preference to projects involving the development of new basic water supplies which may include the enlargement of existing dams and reservoirs, and for projects that will remedy existing water supply problems. The department and the California Water Commission shall set priority for loans pursuant to this section on the basis of the cost-effectiveness of the proposed project, with the most cost-effective projects receiving highest priority.

(d) If the water supply function of a dam and reservoir facility is operationally limited or eliminated for dam safety purposes, pursuant to Part 1 (commencing with Section 6000) of Division 3, the department and the California Water Commission may give consideration to projects which would rehabilitate the dam and reservoir for water supply purposes. The rehabilitation of facilities may include comparable replacement facilities.

(e) The department shall not make loans pursuant to this section for otherwise eligible projects whose benefits are more than 50 percent derived from hydroelectric generation, as determined by the department.

(f) The department may make loans to local agencies, at the interest rates authorized pursuant to this chapter and pursuant to any terms and conditions as may be determined necessary by the department, for the purposes of financing feasibility studies of projects potentially eligible for funding pursuant to this section. No single potential project shall be eligible to receive more than five hundred thousand dollars ($500,000),

and not more than 10 percent of the total amount of bonds authorized to be expended for purposes of this section may be expended for those purposes.

SEC. 231. Section 12890.4 of the Water Code is amended to read:

12890.4. The department shall keep full and complete records and accounts concerning all of its transactions under this chapter.

SEC. 231.5. Section 12928.5 of the Water Code is repealed.

SEC. 232. Section 12929.47 of the Water Code is repealed.

SEC. 232.1. Section 12939 of the Water Code is amended to read:

12939. Upon the written request of the board, supported by a statement of the expenditures made and to be made for the State Water Resources Development System, the committee shall determine whether or not it is necessary or desirable to issue any bonds authorized under this chapter in order to make those expenditures and, if so, the amount of bonds then to be issued and sold. Successive issues of bonds may be authorized and sold to make those expenditures progressively and it shall not be necessary that all of the bonds herein authorized to be issued shall be sold at any one time.

SEC. 232.2. Section 13467 of the Water Code is repealed.

SEC. 232.3. Section 14014 of the Water Code is repealed.

SEC. 232.4. Section 14919 of the Water Code is repealed.

SEC. 233. Section 366.28 of the Welfare and Institutions Code is repealed.

SEC. 234. Section 4640.6 of the Welfare and Institutions Code is amended to read:

4640.6. (a) In approving regional center contracts, the department shall ensure that regional center staffing patterns demonstrate that direct service coordination are the highest priority.

(b) Contracts between the department and regional centers shall require that regional centers implement an emergency response system that ensures that a regional center staff person will respond to a consumer, or individual acting on behalf of a consumer, within two hours of the time an emergency call is placed. This emergency response system shall be operational 24 hours per day, 365 days per year.

(c) Contracts between the department and regional centers shall require regional centers to have service coordinator-to-consumer ratios, as follows:

(1) An average service coordinator-to-consumer ratio of one to 62 for all consumers who have not moved from the developmental centers to the community since April 14, 1993. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 79 consumers for more than 60 days.

(2) An average service coordinator-to-consumer ratio of one to 45 for all consumers who have moved from a developmental center to the

community since April 14, 1993. In no case shall a service coordinator for these consumers have an assigned caseload in excess of 59 consumers for more than 60 days.

(d) For purposes of this section, ''service coordinator'' means a regional center employee whose primary responsibility includes preparing, implementing, and monitoring consumers' individual program plans, securing and coordinating consumer services and supports, and providing placement and monitoring activities.

(e) In order to ensure that caseload ratios are maintained pursuant to this section, each regional center shall provide service coordinator caseload data to the department in September and March of each fiscal year, commencing in the 1999-2000 fiscal year. The data shall be submitted in a format prescribed by the department. Within 30 days of receipt of data submitted pursuant to this subdivision, the department shall make a summary of the data available to the public upon request. The department shall verify the accuracy of the data when conducting regional center fiscal audits. Data submitted by regional centers pursuant to this subdivision shall:

(1) Only include data on service coordinator positions as defined in subdivision (d). Regional centers shall identify the number of positions that perform service coordinator duties on less than a full-time basis. Staffing ratios reported pursuant to this subdivision shall reflect the appropriate proportionality of these staff to consumers served.

(2) Be reported separately for service coordinators whose caseload primarily includes any of the following:

(A) Consumers who are three years of age and older and who have not moved from the developmental center to the community since April 14, 1993.

(B) Consumers who have moved from a developmental center to the community since April 14, 1993.

(C) Consumers who are younger than three years of age.

(3) Not include positions that are vacant for more than 60 days.

(f) The department shall provide technical assistance and require a plan of correction for any regional center that, for two consecutive reporting periods, fails to maintain service coordinator caseload ratios required by this section or otherwise demonstrates an inability to maintain appropriate staffing patterns pursuant to this section. Plans of correction shall be developed following input from the local area board, local organizations representing consumers, family members, regional center employees, including recognized labor organizations, and service providers, and other interested parties.

(g) Contracts between the department and regional center shall require the regional center to have, or contract for, all of the following areas:

(1) Criminal justice expertise to assist the regional center in providing services and support to consumers involved in the criminal justice system as a victim, defendant, inmate, or parolee.

(2) Special education expertise to assist the regional center in providing advocacy and support to families seeking appropriate educational services from a school district.

(3) Family support expertise to assist the regional center in maximizing the effectiveness of support and services provided to families.

(4) Housing expertise to assist the regional center in accessing affordable housing for consumers in independent or supportive living arrangements.

(5) Community integration expertise to assist consumers and families in accessing integrated services and supports and improved opportunities to participate in community life.

(6) Quality assurance expertise, to assist the regional center to provide the necessary coordination and cooperation with the area board in conducting quality-of-life assessments and coordinating the regional center quality assurance efforts.

(7) Each regional center shall employ at least one consumer advocate who is a person with developmental disabilities.

(8) Other staffing arrangements related to the delivery of services that the department determines are necessary to ensure maximum cost-effectiveness and to ensure that the service needs of consumers and families are met.

(h) Any regional center proposing a staffing arrangement that substantially deviates from the requirements of this section shall request a waiver from the department. Prior to granting a waiver, the department shall require a detailed staffing proposal, including, but not limited to, how the proposed staffing arrangement will benefit consumers and families served, and shall demonstrate clear and convincing support for the proposed staffing arrangement from constituencies served and impacted, that include, but are not limited to, consumers, families, providers, advocates, and recognized labor organizations. In addition, the regional center shall submit to the department any written opposition to the proposal from organizations or individuals, including, but not limited to, consumers, families, providers, and advocates, including recognized labor organizations. The department may grant waivers to regional centers that sufficiently demonstrate that the proposed staffing arrangement is in the best interest of consumers and families served, complies with the requirements of this chapter, and does not violate any contractual requirements. A waiver shall be approved by the department for up to 12 months, at which time a regional center may submit a new request pursuant to this subdivision.

(i) The requirements of subdivisions (c), (f), and (h) shall not apply when a regional center is required to develop an expenditure plan pursuant to Section 4791, and when the expenditure plan addresses the specific impact of the budget reduction on staffing requirements and the expenditure plan is approved by the department.

SEC. 235. Section 4669.75 of the Welfare and Institutions Code is amended to read:

4669.75. (a) Any proposal approved by the department pursuant to this article may be implemented immediately upon approval. Prior to submitting a proposal to the department, the regional center shall conduct a public hearing to receive comments on the proposal. Notice of the public hearing shall be given at least 10 business days in advance of the hearing. The public hearing shall be conducted in accordance with this section.

(b) Notice shall include a summary of the proposal, analysis of the effect of the proposal upon the regional center budget and the state budget, the impact on regional center services, and the impact on consumers served under the proposal, and a list of the statutes and regulations that will be waived under the proposal. No proposal approved under this article shall authorize a regional center to implement proposals that have not met all the requirements of this article. The department may not delegate its authority to review and approve proposals in accordance with this article.

(c) Each written comment submitted prior to the close of the final public hearing, and a summary of verbal testimony received, shall be considered by the regional center, and a summary of the responses to all comments shall be submitted as part of the proposal to the department. These comments and responses shall be made available, along with the proposal, for public review.

(d) A service delivery alternative shall be required to be implemented within the existing regional center funding allocation and shall be cost-effective to the state. No additional allocation shall be made to permit a regional center to implement a service delivery alternative. No proposal approved under this article shall authorize or give authority to a regional center to go forward with any other specific action or proposal that has not met all of the requirements of this article. The department may not delegate its authority to review and approve proposals in accordance with this article to a regional center or any other entity.

(e) Proposals approved by the department shall meet freedom of choice requirements pursuant to the assurances required in the home- and community-based services waiver under Section 1396n of Title 42 of the United States Code.

SEC. 236. Section 5586 of the Welfare and Institutions Code is repealed.

SEC. 237. Section 5673 of the Welfare and Institutions Code is amended to read:

5673. (a) A five-year pilot program is hereby authorized in Napa County and Riverside County to establish a 15-bed locked facility in each county, for the provision of community care and treatment for mentally disordered persons who are placed in a state hospital or another health facility because no community placements are available to meet the needs of these patients. It is the intent of the Legislature to carefully evaluate this specific approach to determine its potential for replication in other limited jurisdictions. Participation in this pilot program by the two counties shall be on a voluntary basis. The pilot program shall be implemented notwithstanding the following licensure requirements enforced by the State Department of Social Services:

(1) Subdivision (a) of Section 1502 of the Health and Safety Code, which defines a community care facility as providing nonmedical care.

(2) Subdivision (a) of Section 1505 of the Health and Safety Code, which exempts any health facility, as defined by Section 1250 of the Health and Safety Code, from licensure under the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code).

(3) Section 1507 of the Health and Safety Code, which limits the provision of medical services in community care facilities to incidental medical services.

(4) Paragraph (5) of subdivision (a) of Section 80001 of Title 22 of the California Code of Regulations, which states that an adult residential facility provides nonmedical care.

(5) Paragraph (7) of subdivision (a) of Section 80072 of Title 22 of the California Code of Regulations, which relates to a client's right not to be locked in any room, building, or facility premises. However, for purposes of this section, a client shall not be locked in any room.

(b) Clients provided care within these pilot facilities shall be conservatees as defined by Section 5350 who, prior to the establishment of this program, either received care at a state hospital or were placed in facilities for the mentally disordered.

(c) Standards for services provided shall be developed by each county mental health director, in consultation with, and approved by, the State Department of Mental Health and monitored regularly by the department for compliance with these standards. These services shall be on a 24-hour basis in a therapeutic homelike environment. The services shall cover the full range of the social rehabilitation model concept, including, but not limited to, the following:

(1) Counseling.

(2) Day treatment.

(3) Crisis intervention.

(4) Vocational training.

(5) Medication evaluation and management by a licensed physician and other licensed professional and paraprofessional staff who possess a valid license or certificate to perform this function.

(d) Administration of medication and monitoring of medication shall occur notwithstanding statutory and regulatory licensure requirements for community care facilities to the contrary. Standards for use of medications shall be developed and monitored by the State Department of Mental Health.

(e) The facilities shall be licensed and monitored by the State Department of Social Services and shall comply with all licensing requirements except those specifically exempted by this section. In addition, no less than 75 square feet of outdoor space per client shall be made available for client use. The State Department of Social Services shall conduct inspections of the facilities pursuant to Section 1533 of the Health and Safety Code and shall be given immediate access to the facilities.

(f) In staffing the pilot program, each county board of supervisors shall give full consideration to each potential means of implementation, including, but not limited to, the clinical, programmatic, and economic benefits and advantages of each alternative. The pilot program shall meet all of the staffing criteria of subdivision (b) of Section 5670.5. The staff shall use and document the actions of a multidisciplinary professional consultation staff to meet the specific diagnostic and treatment needs of clients. The staff shall include, but need not be limited to, a licensed psychiatrist, a psychologist, a social worker, and a psychiatric technician. The staff may also include a licensed vocational nurse. One or more of the following licensed professionals shall be present at the facility at all times:

(1) A psychiatrist or psychologist.

(2) A registered psychiatric nurse.

(3) A psychiatric technician.

(4) A licensed vocational nurse.

(g) Protocols and training shall be established for licensed vocational nurses employed by these facilities.

(h) The State Department of Mental Health shall certify the program content in each county and monitor the program's functions on a regular basis and the State Department of Social Services shall regularly evaluate the facilities in accord with its statutory and regulatory licensure functions, pursuant to subdivisions (d) and (e).

(i) The pilot program shall be deemed successful if it demonstrates both of the following:

(1) That costs of the program are no greater than public expenditures for providing alternative services to the clients served by the program.

(2) That the benefit to the clients, as described in subdivision (h), is improved by the program.

(j) Commencement of the pilot program in each county pursuant to this section shall be contingent upon the county and the department identifying funds for this purpose, as described in a financial plan that is approved in advance by the Department of Finance.

SEC. 238. Section 10603.3 of the Welfare and Institutions Code is repealed.

SEC. 239. Section 10609.5 of the Welfare and Institutions Code is amended to read:

10609.5. (a) The department shall contract with an appropriate and qualified entity to conduct an evaluation of the adequacy of the current child welfare services budgeting methodology and make recommendations for revising the budgeting methodology, including appropriate caseload levels, supportive services, and preventative services, in order to accurately and adequately fund the system. This evaluation shall, at a minimum, consider the impact of the following factors on the budgeting methodology:

(1) The current state and federal statutory and regulatory environment for child welfare services.

(2) The state of the art advancements and best child welfare practice, such as family conferencing and wraparound services.

(3) The impact of the child welfare services case management system on the workload of workers in the system.

(4) The nature and degree of the problems experienced by families in need of child welfare services, and the service needs of abused and neglected children and their families.

(5) The impact on workload of obtaining timely medical, mental health, educational, and developmental assessments of children in the child welfare system, and coordinating with other systems to meet the children's needs.

(b) The department shall convene an advisory group that shall include representatives of the County Welfare Directors Association, the California State Association of Counties, child welfare services consumers, children's advocacy organizations, and child welfare social worker organizations. The advisory group shall do both of the following:

(1) Provide oversight over the process of selecting an entity to conduct an evaluation under subdivision (a).

(2) Provide oversight over, and technical assistance to, the entity selected to conduct the evaluation under subdivision (a).

SEC. 240. Section 10740 of the Welfare and Institutions Code is amended to read:

10740. It is hereby declared that provision for health care services and medical assistance in this code is a matter of statewide concern. The

State Department of Health Services is hereby designated as the single state agency with full power to supervise every phase of the administration of health care services and medical assistance for which grants-in-aid are received from the United States government or made by the state in order to secure full compliance with the applicable provisions of state and federal laws.

SEC. 241. Section 10790 of the Welfare and Institutions Code is amended to read:

10790. (a) The director, in consultation with the County Welfare Directors Association and at least one advocate for welfare recipients, shall establish, within the Aid to Families with Dependent Children (AFDC) program (Chapter 2 (commencing with Section 11200) of Part 3), and the Food Stamp Program (Chapter 10 (commencing with Section 18900) of Part 6), the Consolidated Public Assistance Eligibility Determination Demonstration Project.

(b) (1) The director shall, by formal order, waive the enforcement of those regulations and standards necessary to implement the project with federal approval, in order to implement the demonstration project.

(2) The order establishing the waiver authorized by paragraph (1) shall meet all of the following requirements:

(A) It shall provide alternative methods and procedures of eligibility administration.

(B) It shall not conflict with the basic purposes or coverage provided by law.

(C) The director shall determine, based on estimates, the impact of the proposed changes on AFDC and food stamp recipients. The order shall be implemented only if no more than 5 percent of the recipients are expected to experience a net benefit reduction.

(D) Applications for, and restorations of, aid shall be processed in the shorter of the time periods required for the AFDC and Food Stamp programs, when differences exist between the two programs.

(E) It shall not be general in scope and shall apply only to the project authorized by this section.

(3) The order establishing the waiver authorized by paragraph (1) shall take effect only if the appropriate federal agencies have agreed to approve the demonstration project and to waive those federal requirements that are necessary for waiver under the project.

(c) Applicants and recipients under this chapter shall be entitled to the same rights and fair hearings and appeals as those to which they would otherwise be entitled under the AFDC program (Chapter 2 (commencing with Section 11200) of Part 3) and the Food Stamp Program (Chapter 10 (commencing with Section 18900) of Part 6).

(d) The director shall include in the request for any waivers necessary for the implementation of this demonstration project the declaration that

if any of the specific elements, pursuant to Section 10791, are deemed unwaivable or are not granted, the other elements may be considered independently and waived as permitted under federal law.

(e) The director may exclude from the request for waivers any specific element, pursuant to subparagraph (D) of paragraph (2) of subdivision (b) of this section or Section 10791, determined to be not cost-effective due to significant General Fund costs.

SEC. 243. Section 11329 of the Welfare and Institutions Code is amended to read:

11329. (a) The department shall evaluate the program and shall collect data on program cost, caseload movement, and program outcomes, including data on all of the following:

(1) The numbers of voluntary and mandatory participants in each program component.

(2) The amount of time that each participant remains in each component and the types of services, including supportive services, each participant receives.

(3) The number of recipients in each component that move to each of the other components.

(4) The number of participants sanctioned as well as the amount and duration of the sanction, the reason for the sanction, and the amount of time the participant was in the program prior to the sanction.

(5) The number of participants who go off aid, and to the extent possible, the reason they have gone off aid.

(6) The number of applicants who reapplied for and received aid after having gone off aid during the time they were participating in the program.

(7) The starting salary of employed participants.

(8) Participants' job retention rates.

(9) The appropriateness of the categorization of participants.

(10) The appropriateness of assessments and employment plans.

(11) The appropriateness of preemployment preparation assignments, including a periodic review of the appropriateness of these assignments.

(12) The effectiveness of training components based upon the number of individuals placed in employment.

(13) The timeliness of preemployment preparation assignment reviews.

(14) The appropriateness of sanctions applied under this article.

(b) The department may use standard statistical sampling methods to conduct the evaluation. The department shall maintain this data for the state and for each county. The department may contract with a qualified organization for the evaluation required by this section. The department shall submit a plan for implementing this evaluation to the Joint

Legislative Budget Committee. To the extent possible, the data collection system for this evaluation shall be designed to collect data in the least expensive and least time-consuming manner possible.

SEC. 244. Section 11450.3 of the Welfare and Institutions Code is amended to read:

11450.3. (a) The director may establish, within the department, the Emergency Housing Apartment Program Demonstration Project.

(b) The director may, by formal order, waive the operation of specific provisions in paragraph (2) of subdivision (f) of Section 11450, as required for participation in the Emergency Housing Apartment Program Demonstration Project. The order establishing the waiver shall limit the operation of the demonstration project to San Francisco or Contra Costa County, or both, for no more than five years of operation, and shall not result in the reduction or elimination of any family's eligibility for assistance under paragraph (2) of subdivision (f) of Section 11450. The order establishing the waiver shall not take effect unless and until the following conditions have been met:

(1) The United States Department of Health and Human Services has approved federal financial participation for the demonstration project.

(2) A comprehensive plan, including an analysis of the expected costs and savings, has been published in a newspaper of general circulation in the county or counties conducting the demonstration project and filed with the policy and fiscal committees of each house of the Legislature.

(c) The county or counties participating in the demonstration project authorized by this section shall submit an annual report to the department on the demonstration project. The county or counties shall additionally collect and report any data and findings as required by the department and shall cooperate with the department in evaluating the demonstration project.

(d) It is the intent of the Legislature that funding for the demonstration project authorized by this section be contained in annual Budget Act appropriations.

SEC. 245. Section 11461.1 of the Welfare and Institutions Code is amended to read:

11461.1. It is the intent of the Legislature to ensure quality care for children who are placed in foster family homes. Therefore, the State Department of Social Services is directed to work with counties, foster parent associations, representatives of the community colleges, representatives of foster youth organizations, legislative staff members, and other interested parties concerning training requirements, experience, and retention of foster parents and the capacity of foster homes.

SEC. 246. Section 11487.5 of the Welfare and Institutions Code is amended to read:

11487.5. (a) Notwithstanding any other provision of law, including Sections 11487 and 15204.5, the department shall implement a program in any participating county whereby the county shall be reimbursed for overpayment recoveries under Section 11004 as follows:

(1) Reimbursement shall be made to a participating county based on a plan of operations for a program of overpayment recoveries that is approved by the department. No operating plan shall be approved by the department unless the plan contains assurances that the participating county will maintain a centralized unit or designate a person or persons to perform the overpayment recovery activities.

(2) Reimbursement shall be made for all allowable administrative costs incurred, as defined by the department, to make a recovery of overpayments under Section 11004, not to exceed the state's share of the overpayments recovered by the county.

(b) For purposes of this section, ''participating county'' means any county in which the welfare director applies to the department for participation in the program prescribed by this section.

(c) This section shall be implemented when both of the following have occurred:

(1) The federal government has made funding available for the activities described in this section.

(2) The Department of Finance has examined the annual projection of costs and savings for these activities certified by the director, and has determined that during each fiscal year in which the director proposes to implement these provisions the savings to the General Fund from increased overpayment recoveries equals or exceeds the additional costs to the state.

SEC. 247. Section 14017.1 of the Welfare and Institutions Code is amended to read:

14017.1. The Joint Legislative Audit Committee shall conduct an audit of one or more county eligibility departments.

SEC. 248. Section 14085.5 of the Welfare and Institutions Code is amended to read:

14085.5. (a) Each disproportionate share hospital contracting to provide services under this article or contracting with a county organized health system, and which has or would have met the state criteria developed pursuant to the federal medicaid requirements regarding disproportionate hospitals for the three most recent years prior to submitting final plans for an eligible project in accordance with subparagraph (C) of paragraph (1) of subdivision (b), may, in addition to the rate of payment provided for in the contract entered into under this article, receive supplemental reimbursement to the extent provided for in this section.

(b) (1) (A) A hospital qualifying pursuant to subdivision (a) shall submit documentation regarding debt service on revenue bonds used for financing the construction, renovation, or replacement of hospital facilities, including buildings and fixed equipment.

(B) Qualified hospitals may submit debt service instruments to the department and to the commission regarding debt issued for new capital projects.

(C) Eligible projects shall include those new capital projects funded by new debt for which final plans have been submitted to the Office of the State Architect and the Office of Statewide Health Planning and Development after September 1, 1988, and prior to June 30, 1994, except that projects submitted between September 1, 1988, and June 30, 1989, shall be eligible only if the submitting hospital had all of the following additional characteristics during the 1989 calendar year:

(i) No less than 400 general acute care licensed beds.

(ii) An average Medi-Cal patient census of not less than 30 percent of the total patient days.

(iii) No less than 50,000 emergency department visits.

(iv) An existing basic emergency department, obstetrical services, and a neonatal intensive care unit.

(D) The department shall confirm in writing hospital and project eligibility for partial financing under this section.

(E) Department advisory letters, conditioned on hospital and project conformity to plans, may be requested by hospitals prior to final plan submission.

(F) Capital projects receiving partial financing under this section shall finance the upgrading or construction of buildings and equipment to a level required by currently accepted medical practice standards, including projects designed to correct Joint Commission on Accreditation of Hospitals and Health Systems fire and life safety, seismic, or other related regulatory standards.

(2) Projects may also expand service capacity as needed to maintain current or reasonably foreseeable necessary bed capacity to meet the needs of Medi-Cal beneficiaries after giving consideration to bed capacity needed for other patients, including unsponsored patients.

(3) (A) Debt service shall only be paid for projects, or for that portion of projects, that are available and accessible to patients treated under this article or by successor programs.

(B) Each project shall cost at least five million dollars ($5,000,000) or, if less than five million dollars ($5,000,000), the project shall be necessary for retention of federal and state licensing and certification and for meeting fire and life safety, seismic, or other related regulatory standards.

(4) Supplemental reimbursement payments shall commence no later than 30 days after receipt of the certificate of occupancy by the hospital.

(5) (A) The state shall pledge to, and agree with, the holders of any revenue bonds issued to finance projects qualifying under this section that until debt service on the revenue bonds is fully paid, or until the supplemental rate is no longer required as provided by this section, the state will not limit or alter the rights vested in the hospital to receive supplemental reimbursement pursuant to this section.

(B) The state shall pledge, and the hospital shall, as a condition of encumbering supplemental reimbursement payments received pursuant to this section, pledge that supplemental reimbursement payments shall be used for the payment of debt service on the revenue bonds. The hospital shall include its pledge and the agreement with the state in any agreement with the holders of the revenue bonds.

(c) The hospital's supplemental reimbursement for a project qualifying pursuant to subdivisions (a) and (b) shall be calculated as follows:

(1) For any fiscal year for which the hospital is eligible to receive reimbursement, the hospital shall report to the department the amount of debt service on the revenue bonds issued to finance the project.

(2) (A) The department shall use the medicaid inpatient utilization rate as determined pursuant to Section 4112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) to determine the ratio of the hospital's total paid Medi-Cal patient days to total patient days.

(B) (i) Notwithstanding any other provision of law, in determining the hospital's medicaid inpatient utilization rate for the purposes of this section, the department shall include in both the numerator and denominator all Medi-Cal inpatient days of care provided by the hospital after December 31, 1994, to Medi-Cal beneficiaries who are enrolled in prepaid health plans contracting with the department. Where reliable data regarding those days are available from Medi-Cal prepaid health plans contracting with participating hospitals for services rendered prior to January 1, 1995, that data may be used by the department in the calculations.

(ii) For purposes of this section, Medi-Cal prepaid health plan programs, and the days relating thereto, shall include, but not be limited to, the programs listed in paragraph (1) of subdivision (b) of Section 14105.985, Section 14089, and any prepaid programs implemented under Section 14087.3, including the two-plan model described in the report issued on March 31, 1993, by the department, entitled ''The State Department of Health Services' Plan for Expanding Medi-Cal Managed Care: Protecting Vulnerable Populations.''

(3) (A) (i) The supplemental Medi-Cal reimbursement to the hospital for each fiscal year shall equal the amount determined annually

in paragraph (1) multiplied by the percentage figure determined in paragraph (2). In no instance shall the percentage figure determined pursuant to the ratio derived under paragraph (2) be decreased by more than 10 percent of the initial ratio determined pursuant to paragraph (2) prior to the retirement of the debt.

(ii) Hospitals whose Medi-Cal ratio falls below 90 percent of the initial level established at the point of final plan submission shall at least maintain the volume of Medi-Cal utilization which was recorded at the time of final plan submission unless forces beyond the hospital's control have decreased the absolute volume of care.

(B) (i) In no instance shall the total amount of reimbursement received under this section combined with that received from all other sources dedicated exclusively to debt service exceed 100 percent of the debt service over the life of the loan.

(ii) A hospital qualifying for and receiving supplemental Medi-Cal reimbursement shall continue to receive the reimbursement until the qualifying loan is paid off, or the hospital is terminated as a Medi-Cal selective contractor and the hospital does not contract with a county organized health system.

(iii) It is the intent of the Legislature that the state and the qualifying hospital shall negotiate in good faith for rates sufficient to ensure continued hospital participation in the program and to ensure adequate access to services for Medi-Cal beneficiaries.

(iv) The state shall not terminate a contract with a qualified provider for the purpose of terminating the capital supplement.

(v) If negotiations fail to permit continuation of a contract of a hospital qualifying for the supplemental Medi-Cal reimbursement, the supplemental Medi-Cal reimbursement shall cease as of the date of discontinuance of the selective provider contract.

(4) In order to ensure provision of qualified supplemental payments to disproportionate share hospitals contracting with county organized health systems, the department shall make the qualified supplemental payments directly to these hospitals.

(5) Funding for these supplemental payments shall be separately appropriated as a line item in the Budget Act for each fiscal year for any project for which a request for payment is received after April 1 of each fiscal year. The department shall request a deficiency appropriation if funds for the payment are not appropriated in the Budget Act.

(6) (A) Paragraphs (1) to (4), inclusive, shall be incorporated into an amendment to any contract entered into by a hospital pursuant to this article.

(B) (i) Any contract amendment required by paragraph (A) shall include a payment methodology based on inpatient hospital services rendered to Medi-Cal patients, either on a per diem basis, a per-discharge

basis, or any other federally permissible basis, and which is consistent with the hospital's Medi-Cal contract.

(ii) The payment methodology specified in clause (i) shall ensure that the hospital, on an annual basis, receives the amount of supplemental reimbursement calculated pursuant to paragraph (3), excluding only the federal portion of costs which have been determined by the federal government not to be allowable under Title XIX of the federal Social Security Act (Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code).

(iii) The payment methodology specified in clause (i) shall contain a retrospective adjustment mechanism to ensure that, regardless of the payment methodology, the department shall pay the hospital the full amount owed to the hospital for the year, as determined pursuant to this section.

(7) In negotiating contracts with hospitals receiving payments under this section, the commission shall take appropriate steps to ensure the duplicate payments are not made to the hospital for the debt service costs relating to the eligible project.

(d) All reimbursement received by a hospital pursuant to this section shall be placed in a special account, the funds in which shall be used exclusively for the payment of debt service on the revenue bonds issued to finance the project.

(e) If contracting under this section is superseded by other arrangements for payment of inpatient hospital services, the successor program shall include separate reimbursement, as determined pursuant to paragraph (3) of subdivision (c).

(f) (1) For purposes of this section, ''revenue bonds'' are defined as that term is defined in subdivision (c) of Section 15459 of the Government Code, and shall also include general obligation bonds issued by or on behalf of eligible hospitals for projects of more than five million dollars ($5,000,000).

(2) (A) The aggregate principal amount of general obligation bonds to be issued as revenue bonds under this subdivision for the anticipated allowable portion of projects shall not, in any fiscal year, exceed a statewide amount established in the Medi-Cal estimates submitted to the fiscal committees of the Legislature pursuant to Section 14100.5, or as otherwise statutorily determined by the Legislature.

(B) In preparing Medi-Cal estimates, the department shall consider, but need not include, all actual and anticipated projects.

(g) (1) The department shall promptly seek any necessary federal approvals for the implementation of this section, and, if necessary to obtain federal approval, the department may, for federal purposes, limit the program to those costs which are allowable expenditures under Title XIX of the federal Social Security Act (Subchapter 19 (commencing

with Section 1396) of Chapter 7 of Title 42 of the United States Code), subject to paragraph (2).

(2) The department shall continue to be responsible for the reimbursement of eligible providers from state funds for the amount of supplemental reimbursement pursuant to paragraph (3) of subdivision (c), excluding only the federal portion of costs which have been determined by the federal government not to be allowable under Title XIX of the federal Social Security Act.

(h) (1) A hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the implementation of this section.

(2) The department shall submit claims for federal financial participation for all elements of the supplemental reimbursements which are allowable expenditures under federal law.

(3) The department shall, on an annual basis, submit any necessary materials to the federal government to provide assurances that claims for federal financial participation will include only those expenditures which are allowable under federal law.

(4) (A) The department may require that hospitals receiving supplemental reimbursement submit data necessary for the department to determine the appropriate amounts to claim as expenditures qualifying for federal financial participation.

(B) Unless otherwise permitted by federal law, the total statewide payment under the selective provider contracting program, in the aggregate on an annual basis, shall not exceed an amount that would otherwise have been paid under the Medi-Cal program on a statewide basis for the same services, in the aggregate on an annual basis, if the contracting program were not implemented.

(i) (1) Subject to paragraph (2), any hospital that met the criteria specified in subdivision (a) at the time it submitted its final plans for an eligible project in accordance with subparagraph (C) of paragraph (1) of subdivision (b) shall continue to receive reimbursement as set forth in this section irrespective of whether or not the hospital qualifies as a disproportionate share hospital after submission of its final plans.

(2) A hospital that fails to meet the criteria for disproportionate share status on or before June 30, 2002, shall be required to submit data to the department that demonstrates that the hospital failed to meet the criteria for a disproportionate share hospital because its low-income utilization rate, as determined pursuant to Section 4112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203), does not exceed 25 percent due to one or more of the following factors:

(A) An increase in outpatient utilization.

(B) A decrease in the average length of stay for Medi-Cal beneficiaries or charity care patients due to technological advances in the provision of care.

(C) Increased implementation within the state of Medi-Cal prepaid health plan programs.

(D) The level of reimbursement that the hospital receives for outpatient visits.

(E) Other circumstances beyond the hospital's control that affect the hospital's ability to meet the criteria for disproportionate status, even though the hospital continues to have a mission to provide care to Medi-Cal and charity care patients.

SEC. 249. Section 14103.2 of the Welfare and Institutions Code is amended to read:

14103.2. Whenever the director determines that the services or products of a provider cost the program in excess of reasonable value received, the provider shall thereafter be disqualified from participation in the program. The disqualification shall not become effective until an opportunity for a public hearing has been granted.

The department shall conduct a continuing review of reimbursements to all hospitals participating in the program in order to determine if any reimbursements are in excess of reasonable value received.

SEC. 250. Section 14104.3 of the Welfare and Institutions Code is amended to read:

14104.3. (a) The department may, to the extent feasible, enter into nonexclusive contracts providing arrangements under which funds available for health care under this chapter shall be administered and disbursed to providers of health care or to their designated agents in consideration for services rendered and supplies furnished by them in accordance with the provisions of the applicable contract and any schedule of charges or formula for determining payments established pursuant to the contract. The contract shall provide that the contractor:

(1) Will take any action as may be necessary to assure that payment for services to hospitals and other facilities and professional services shall be based on standards determined by the director. The formula for the payments shall be determined in accordance with regulations establishing the methods to be used and the items to be included.

(2) Will take any action which may be necessary to assure that charges by providers will be reasonable and not higher than the charge for a comparable service and under comparable circumstances made to other payors.

(3) Bills for service under this chapter shall be reviewed and rejected or processed for payment within an average of 18 days from receipt of evidence establishing validity of the bill for payment in the office of the contractor. Ninety percent of all bills submitted to the contractor and

under the contractor's control, as set forth in the request for proposal, shall be processed and paid in 30 days and 99 percent of all claims submitted to the contractor and under the contractor's control, as set forth in the request for proposal, shall be processed and paid in 90 days. If it is determined by the contractor that additional evidence of validity is required, the evidence shall be requested within 18 days from the date the bill is received by the contractor. In any event, notice shall be given within 30 days from the date the bill is received concerning the status of the bill submitted if the bill is held for peer review by the contractor beyond 18 days. In no event, shall the number of bills not processed for payment within 30 days of receipt exceed 9 percent of the total bills inventory.

(b) Contracts awarded under this section shall be awarded on a bid basis, and before entering into any contract, the director shall publish notice soliciting bids.

(c) Contracts awarded under this section may provide all of the following:

(1) Payments to the contractor may be on a capitation or prepayment basis, or on a combination of both methods of payment.

(2) Providers may assume all or part of the risk of utilization of services, or costs of services, or both, and that providers who agree to assume that risk may be separately classified for purposes of applicable rates of payment or administrative requirements.

(3) Any other provisions which have previously been incorporated into pilot programs established pursuant to Chapter 8 (commencing with Section 14200) and determined by the director to be desirable and feasible.

SEC. 252. Section 14132 of the Welfare and Institutions Code is amended to read:

14132. The following is the schedule of benefits under this chapter:

(a) Outpatient services are covered as follows:

Physician, hospital or clinic outpatient, surgical center, respiratory care, optometric, chiropractic, psychology, podiatric, occupational therapy, physical therapy, speech therapy, audiology, acupuncture to the extent federal matching funds are provided for acupuncture, and services of persons rendering treatment by prayer or healing by spiritual means in the practice of any church or religious denomination insofar as these can be encompassed by federal participation under an approved plan, subject to utilization controls.

(b) Inpatient hospital services, including, but not limited to, physician and podiatric services, physical therapy and occupational therapy, are covered subject to utilization controls.

(c) Nursing facility services, subacute care services, and services provided by any category of intermediate care facility for the

developmentally disabled, including podiatry, physician, nurse practitioner services, and prescribed drugs, as described in subdivision (d), are covered subject to utilization controls. Respiratory care, physical therapy, occupational therapy, speech therapy, and audiology services for patients in nursing facilities and any category of intermediate care facility for the developmentally disabled are covered subject to utilization controls.

(d) Purchase of prescribed drugs is covered subject to the Medi-Cal List of Contract Drugs and utilization controls.

(e) Outpatient dialysis services and home hemodialysis services, including physician services, medical supplies, drugs and equipment required for dialysis, are covered, subject to utilization controls.

(f) Anesthesiologist services when provided as part of an outpatient medical procedure, nurse anesthetist services when rendered in an inpatient or outpatient setting under conditions set forth by the director, outpatient laboratory services, and X-ray services are covered, subject to utilization controls. Nothing in this subdivision shall be construed to require prior authorization for anesthesiologist services provided as part of an outpatient medical procedure or for portable X-ray services in a nursing facility or any category of intermediate care facility for the developmentally disabled.

(g) Blood and blood derivatives are covered.

(h) (1) Emergency and essential diagnostic and restorative dental services, except for orthodontic, fixed bridgework, and partial dentures that are not necessary for balance of a complete artificial denture, are covered, subject to utilization controls. The utilization controls shall allow emergency and essential diagnostic and restorative dental services and prostheses that are necessary to prevent a significant disability or to replace previously furnished prostheses which are lost or destroyed due to circumstances beyond the beneficiary's control. The department's utilization controls shall not require X-rays as a condition of reimbursement for fillings for children under 18 years of age. Notwithstanding the foregoing, the director may by regulation provide for certain fixed artificial dentures necessary for obtaining employment or for medical conditions which preclude the use of removable dental prostheses, and for orthodontic services in cleft palate deformities administered by the department's California Children Services Program.

(2) For persons 21 years of age or older, the services specified in paragraph (1) shall be provided subject to the following conditions:

(A) Periodontal treatment is not a benefit.

(B) Endodontic therapy is not a benefit except for vital pulpotomy.

(C) Laboratory processed crowns are not a benefit.

(D) Removable prosthetics shall be a benefit only for patients as a requirement for employment.

(E) The director may, by regulation, provide for the provision of fixed artificial dentures that are necessary for medical conditions that preclude the use of removable dental prostheses.

(F) Notwithstanding the conditions specified in subparagraphs (A) to (E), inclusive, the department may approve services for persons with special medical disorders subject to utilization review.

(3) Paragraph (2) shall become inoperative July 1, 1995.

(i) Medical transportation is covered, subject to utilization controls.

(j) Home health care services are covered, subject to utilization controls.

(k) Prosthetic and orthotic devices and eyeglasses are covered, subject to utilization controls. Utilization controls shall allow replacement of prosthetic and orthotic devices and eyeglasses necessary because of loss or destruction due to circumstances beyond the beneficiary's control. Frame styles for eyeglasses replaced pursuant to this subdivision shall not change more than once every two years, unless the department so directs.

Orthopedic and conventional shoes are covered when provided by a prosthetic and orthotic supplier on the prescription of a physician and when at least one of the shoes will be attached to a prosthesis or brace, subject to utilization controls. Modification of stock conventional or orthopedic shoes when medically indicated, is covered subject to utilization controls. When there is a clearly established medical need that cannot be satisfied by the modification of stock conventional or orthopedic shoes, custom-made orthopedic shoes are covered, subject to utilization controls.

(*l*) Hearing aids are covered, subject to utilization controls. Utilization controls shall allow replacement of hearing aids necessary because of loss or destruction due to circumstances beyond the beneficiary's control.

(m) Durable medical equipment and medical supplies are covered, subject to utilization controls. The utilization controls shall allow the replacement of durable medical equipment and medical supplies when necessary because of loss or destruction due to circumstances beyond the beneficiary's control. The utilization controls shall allow authorization of durable medical equipment needed to assist a disabled beneficiary in caring for a child for whom the disabled beneficiary is a parent, stepparent, foster parent, or legal guardian, subject to the availability of federal financial participation. The department shall adopt emergency regulations to define and establish criteria for assistive durable medical equipment in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(n) Family planning services are covered, subject to utilization controls.

(o) Inpatient intensive rehabilitation hospital services, including respiratory rehabilitation services, in a general acute care hospital are covered, subject to utilization controls, when either of the following criteria are met:

(1) A patient with a permanent disability or severe impairment requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to develop function beyond the limited amount that would occur in the normal course of recovery.

(2) A patient with a chronic or progressive disease requires an inpatient intensive rehabilitation hospital program as described in Section 14064 to maintain the patient's present functional level as long as possible.

(p) Adult day health care is covered in accordance with Chapter 8.7 (commencing with Section 14520).

(q) (1) Application of fluoride, or other appropriate fluoride treatment as defined by the department, other prophylaxis treatment for children 17 years of age and under, are covered.

(2) All dental hygiene services provided by a registered dental hygienist in alternative practice pursuant to Sections 1768 and 1770 of the Business and Professions Code may be covered as long as they are within the scope of Denti-Cal benefits and they are necessary services provided by a registered dental hygienist in alternative practice.

(r) (1) Paramedic services performed by a city, county, or special district, or pursuant to a contract with a city, county, or special district, and pursuant to a program established under Article 3 (commencing with Section 1480) of Chapter 2.5 of Division 2 of the Health and Safety Code by a paramedic certified pursuant to that article, and consisting of defibrillation and those services specified in subdivision (3) of Section 1482 of the article.

(2) All providers enrolled under this subdivision shall satisfy all applicable statutory and regulatory requirements for becoming a Medi-Cal provider.

(3) This subdivision shall be implemented only to the extent funding is available under Section 14106.6.

(s) In-home medical care services are covered when medically appropriate and subject to utilization controls, for beneficiaries who would otherwise require care for an extended period of time in an acute care hospital at a cost higher than in-home medical care services. The director shall have the authority under this section to contract with organizations qualified to provide in-home medical care services to those persons. These services may be provided to patients placed in shared or congregate living arrangements, if a home setting is not

medically appropriate or available to the beneficiary. As used in this section, ''in-home medical care service'' includes utility bills directly attributable to continuous, 24-hour operation of life-sustaining medical equipment, to the extent that federal financial participation is available.

As used in this subdivision, in-home medical care services, include, but are not limited to:

(1) Level of care and cost of care evaluations.

(2) Expenses, directly attributable to home care activities, for materials.

(3) Physician fees for home visits.

(4) Expenses directly attributable to home care activities for shelter and modification to shelter.

(5) Expenses directly attributable to additional costs of special diets, including tube feeding.

(6) Medically related personal services.

(7) Home nursing education.

(8) Emergency maintenance repair.

(9) Home health agency personnel benefits which permit coverage of care during periods when regular personnel are on vacation or using sick leave.

(10) All services needed to maintain antiseptic conditions at stoma or shunt sites on the body.

(11) Emergency and nonemergency medical transportation.

(12) Medical supplies.

(13) Medical equipment, including, but not limited to, scales, gurneys, and equipment racks suitable for paralyzed patients.

(14) Utility use directly attributable to the requirements of home care activities which are in addition to normal utility use.

(15) Special drugs and medications.

(16) Home health agency supervision of visiting staff which is medically necessary, but not included in the home health agency rate.

(17) Therapy services.

(18) Household appliances and household utensil costs directly attributable to home care activities.

(19) Modification of medical equipment for home use.

(20) Training and orientation for use of life support systems, including, but not limited to, support of respiratory functions.

(21) Respiratory care practitioner services as defined in Sections 3702 and 3703 of the Business and Professions Code, subject to prescription by a physician and surgeon.

Beneficiaries receiving in-home medical care services are entitled to the full range of services within the Medi-Cal scope of benefits as defined by this section, subject to medical necessity and applicable utilization control. Services provided pursuant to this subdivision,

which are not otherwise included in the Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with a home- and community-based services waiver.

(t) Home- and community-based services approved by the United States Department of Health and Human Services may be covered to the extent that federal financial participation is available for those services under waivers granted in accordance with Section 1396n of Title 42 of the United States Code. The director may seek waivers for any or all home- and community-based services approvable under Section 1396n of Title 42 of the United States Code. Coverage for those services shall be limited by the terms, conditions, and duration of the federal waivers.

(u) Comprehensive perinatal services, as provided through an agreement with a health care provider designated in Section 14134.5 and meeting the standards developed by the department pursuant to Section 14134.5, subject to utilization controls.

The department shall seek any federal waivers necessary to implement the provisions of this subdivision. The provisions for which appropriate federal waivers cannot be obtained shall not be implemented. Provisions for which waivers are obtained or for which waivers are not required shall be implemented notwithstanding any inability to obtain federal waivers for the other provisions. No provision of this subdivision shall be implemented unless matching funds from Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are available.

(v) Early and periodic screening, diagnosis, and treatment for any individual under 21 years of age is covered, consistent with the requirements of Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

(w) Hospice service which is Medicare-certified hospice service is covered, subject to utilization controls. Coverage shall be available only to the extent that no additional net program costs are incurred.

(x) When a claim for treatment provided to a beneficiary includes both services which are authorized and reimbursable under this chapter, and services which are not reimbursable under this chapter, that portion of the claim for the treatment and services authorized and reimbursable under this chapter shall be payable.

(y) Home- and community-based services approved by the United States Department of Health and Human Services for beneficiaries with a diagnosis of AIDS or ARC, who require intermediate care or a higher level of care.

Services provided pursuant to a waiver obtained from the Secretary of the United States Department of Health and Human Services pursuant to this subdivision, and which are not otherwise included in the

Medi-Cal schedule of benefits, shall be available only to the extent that federal financial participation for these services is available in accordance with the waiver, and subject to the terms, conditions, and duration of the waiver. These services shall be provided to individual beneficiaries in accordance with the client's needs as identified in the plan of care, and subject to medical necessity and applicable utilization control.

The director may under this section contract with organizations qualified to provide, directly or by subcontract, services provided for in this subdivision to eligible beneficiaries. Contracts or agreements entered into pursuant to this division shall not be subject to the Public Contract Code.

(z) Respiratory care when provided in organized health care systems as defined in Section 3701 of the Business and Professions Code, and as an in-home medical service as outlined in subdivision (s).

(aa) (1) There is hereby established in the department, a program to provide comprehensive clinical family planning services to any person who has a family income at or below 200 percent of the federal poverty level, as revised annually, and who is eligible to receive these services pursuant to the waiver identified in paragraph (2). This program shall be known as the Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program.

(2) The department shall seek a waiver for a program to provide comprehensive clinical family planning services as described in paragraph (8). The program shall be operated only in accordance with the waiver and the statutes and regulations in paragraph (4) and subject to the terms, conditions, and duration of the waiver. The services shall be provided under the program only if the waiver is approved by the federal Health Care Financing Administration in accordance with Section 1396n of Title 42 of the United States Code and only to the extent that federal financial participation is available for the services.

(3) Solely for the purposes of the waiver and notwithstanding any other provision of law, the collection and use of an individual's social security number shall be necessary only to the extent required by federal law.

(4) Sections 14105.3 to 14105.39, inclusive, 14107.11, 24005, and 24013, and any regulations adopted under these statutes shall apply to the program provided for under this subdivision. No other provision of law under the Medi-Cal program or the State-Only Family Planning Program shall apply to the program provided for under this subdivision.

(5) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, without taking regulatory action, the provisions of the waiver after its approval by the federal Health Care Financing

Administration and the provisions of this section by means of an all-county letter or similar instruction to providers. Thereafter, the department shall adopt regulations to implement this section and the approved waiver in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Beginning six months after the effective date of the act adding this subdivision, the department shall provide a status report to the Legislature on a semiannual basis until regulations have been adopted.

(6) In the event that the Department of Finance determines that the program operated under the authority of the waiver described in paragraph (2) is no longer cost-effective, this subdivision shall become inoperative on the first day of the first month following the issuance of a 30-day notification of that determination in writing by the Department of Finance to the chairperson in each house that considers appropriations, the chairpersons of the committees, and the appropriate subcommittees in each house that considers the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(7) If this subdivision ceases to be operative, all persons who have received or are eligible to receive comprehensive clinical family planning services pursuant to the waiver described in paragraph (2) shall receive family planning services under the Medi-Cal program pursuant to subdivision (n) if they are otherwise eligible for Medi-Cal with no share of cost, or shall receive comprehensive clinical family planning services under the program established in Division 24 (commencing with Section 24000) either if they are eligible for Medi-Cal with a share of cost or if they are otherwise eligible under Section 24003.

(8) For purposes of this subdivision, ''comprehensive clinical family planning services'' means the process of establishing objectives for the number and spacing of children, and selecting the means by which those objectives may be achieved. These means include a broad range of acceptable and effective methods and services to limit or enhance fertility, including contraceptive methods, federal Food and Drug Administration approved contraceptive drugs, devices, and supplies, natural family planning, abstinence methods, and basic, limited fertility management. Comprehensive clinical family planning services include, but are not limited to, preconception counseling, maternal and fetal health counseling, general reproductive health care, including diagnosis and treatment of infections and conditions, including cancer, that threaten reproductive capability, medical family planning treatment and procedures, including supplies and followup, and informational, counseling, and educational services. Comprehensive clinical family planning services shall not include abortion, pregnancy testing solely for the purposes of referral for abortion or services ancillary to abortions, or

pregnancy care that is not incident to the diagnosis of pregnancy. Comprehensive clinical family planning services shall be subject to utilization control and include all of the following:

(A) Family planning related services and male and female sterilization. Family planning services for men and women shall include emergency services and services for complications directly related to the contraceptive method, federal Food and Drug Administration approved contraceptive drugs, devices, and supplies, and followup, consultation, and referral services, as indicated, which may require treatment authorization requests.

(B) All United States Department of Agriculture, federal Food and Drug Administration approved contraceptive drugs, devices, and supplies that are in keeping with current standards of practice and from which the individual may choose.

(C) Culturally and linguistically appropriate health education and counseling services, including informed consent, that include all of the following:

(i) Psychosocial and medical aspects of contraception.

(ii) Sexuality.

(iii) Fertility.

(iv) Pregnancy.

(v) Parenthood.

(vi) Infertility.

(vii) Reproductive health care.

(viii) Preconception and nutrition counseling.

(ix) Prevention and treatment of sexually transmitted infection.

(x) Use of contraceptive methods, federal Food and Drug Administration approved contraceptive drugs, devices, and supplies.

(xi) Possible contraceptive consequences and followup.

(xii) Interpersonal communication and negotiation of relationships to assist individuals and couples in effective contraceptive method use and planning families.

(D) A comprehensive health history, updated at next periodic visit (between 11 and 24 months after initial examination) that includes a complete obstetrical history, gynecological history, contraceptive history, personal medical history, health risk factors, and family health history, including genetic or hereditary conditions.

(E) A complete physical examination on initial and subsequent periodic visits.

SEC. 253. Section 14132.90 of the Welfare and Institutions Code is amended to read:

14132.90. (a) As of September 15, 1995, day care habilitative services, pursuant to subdivision (c) of Section 14021 shall be provided

only to alcohol and drug exposed pregnant women and women in the postpartum period, or as required by federal law.

(b) (1) Notwithstanding any other provision of law, except to the extent required by federal law, if, as of May 15, 2000, the projected costs for the 1999–2000 fiscal year for outpatient drug abuse services, as described in Section 14021, exceed forty-five million dollars ($45,000,000) in state General Fund moneys, then the outpatient drug free services, as defined in Section 51341.1 of Title 22 of the California Code of Regulations, shall not be a benefit under this chapter as of July 1, 2000.

(2) Notwithstanding paragraph (1), narcotic replacement therapy and Naltrexone shall remain benefits under this chapter.

(3) Notwithstanding paragraph (1), residential care, outpatient drug free services, and day care habilitative services, for alcohol and drug exposed pregnant women and women in the postpartum period shall remain benefits under this chapter.

(c) Expenditures for services purchased at the direction of county welfare departments on behalf of CalWORKs recipients shall not be included in the computation of costs for subdivision (b).

(d) For the 1999–2000 fiscal year and each fiscal year thereafter, there shall be separate annual fiscal year General Fund appropriations for drug Medi-Cal perinatal services (Item 4200-104-0001 of the Budget Act), drug Medi-Cal nonperinatal services (Item 4200-103-0001 of the Budget Act), nondrug Medi-Cal perinatal services (Item 4200-102-0001 of the Budget Act), and nondrug Medi-Cal nonperinatal services (Item 4200-101-0001 of the Budget Act).

(e) Notwithstanding any other provision of law, the State Department of Alcohol and Drug Programs shall maintain a contingency reserve of the reappropriated General Fund moneys for the purpose of drug Medi-Cal program expenditures.

(f) Unexpended General Fund moneys appropriated for the drug Medi-Cal program may be transferred for use as nondrug Medi-Cal county expenditures in the current or budget years. Unexpended General Fund moneys shall not be transferred from nondrug Medi-Cal to the drug Medi-Cal program for purposes of providing matching funds for federal financial participation.

SEC. 254. Section 14133.5 of the Welfare and Institutions Code is amended to read:

14133.5. There shall be established a two-year pilot program, whereby in Alameda County, utilization controls shall not be required when, pursuant to Title XVIII of the federal Social Security Act, a county hospital based utilization review committee has been established to determine the level of authorization for payment and a utilization plan has been filed with the department and approved by it. The department

shall adopt rules and regulations to implement this section, within 60 days of the effective date of this act, including requirements that a hospital's utilization review committee shall demonstrate that it is more cost-effective than the Medi-Cal utilization control function.

No later than 18 months following the commencement of the pilot program, the department shall submit a report to the Legislature on the program.

SEC. 255. Section 14138.5 of the Welfare and Institutions Code is amended to read:

14138.5. The State Department of Health Services shall report to the Legislature on a biennial basis on all of the following data with respect to the child health and disability prevention program provided for pursuant to Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code:

(a) The number of children, by age and by county, enrolled in each plan contracting with the department or with the California Medical Assistance Commission.

(b) The improved reporting capabilities of the new contract for the Management Information System/Decision Support System (MIS/DSS), with specific emphasis on how it can be used to gather data from the PM 160 forms that are useful for analytical purposes.

(c) Information on what actions are being taken to ensure compliance with Child Health and Disability Prevention Program examination requirements.

(d) The statewide percentage of all children enrolled in managed care plans, by age, who received a comprehensive Child Health and Disability Prevention Program examination, and the percentage of all children enrolled who received a comprehensive Child Health and Disability Prevention Program examination, by county and by plan.

(e) The number of children in each plan, by age, who are current on periodicity health assessments, with appropriate documentation. If the capability to report this information does not exist, a timeline of when the information will be available and the barriers that exist to reporting the information.

(f) The number of children in each plan, by county and by age, who were referred for followup diagnosis or treatment following a Child Health and Disability Prevention Program comprehensive examination.

(g) The number of children in each plan, by county and by age, who received needed diagnosis and treatment as a result of a Child Health and Disability Prevention Program examination. If the capability to report this information does not exist, a timeline of when it will be available and the barriers that exist to reporting this information.

SEC. 256. Section 14145.1 of the Welfare and Institutions Code is amended to read:

14145.1. (a) The department may administer grants for purposes of this article, that shall be awarded through a request for application process.

(1) Grants may be awarded to local organizing groups (LOGs) that are existing or new community-based nonprofit organizations or government entities for purposes of implementing long-term care integration pilot projects, pursuant to Article 4.05 (commencing with Section 14139.05).

(2) Grants may be available for LOGs in the planning phase, or the development phase of the project, or both. Planning phase grants shall be limited to a maximum award of fifty thousand dollars ($50,000). Development phase grants shall be limited to a maximum award of one hundred fifty thousand dollars ($150,000). The planning phase includes activities related to initial planning for a long-term care integration pilot project (LTCIPP). The development phase includes activities for implementing the planning phase, up to actual implementation of the pilot project.

(b) Criteria for grant selection shall include, but not be limited to, the following:

(1) For planning phase grants:

(A) Identification of a LOG committed to development of a LTCIPP that includes major stakeholders, including, but not limited to, consumers, community-based providers, institutional providers, and public entities.

(B) Evidence of local government support for development of a LTCIPP.

(C) A description of current and planned consumer involvement.

(D) A plan for the use of funds.

(E) Specification of goals and objectives, and a work plan for achieving them.

(F) A proposed strategy for project evaluation.

(2) For development phase grants:

(A) Identification of the authorized grantee sanctioned by the local government entity.

(B) Identification of an entity for operation of the LTCIPP.

(C) Definition of a governance structure.

(D) An adopted work plan that includes all of the following:

(i) A vision statement describing the long-term care system for the community.

(ii) Description of the covered scope of services and programs to be integrated at the local level.

(iii) Description of the target population.

(iv) Plan for integration of funding for those services.

(E) Specific work goals for the development phase.

(F) A work schedule for completion.

(G) A proposed strategy for project evaluation.

(3) Both planning phase and development phase grant funds may be used for, but are not limited to, the following purposes:

(A) Staff support.

(B) Consulting contracts.

(C) Community organizing support.

(D) Data analysis.

(c) Grantees shall be required to match a portion of the grant awarded, either with cash, or in-kind contributions totaling 20 percent of the total grant. The match required by this subdivision shall be supplemental to the funds appropriated for the LTCIPP.

SEC. 257. Section 14148 of the Welfare and Institutions Code is amended to read:

14148. (a) The department shall adopt the federal option provided under Section 4101 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100-203) to extend eligibility for medical assistance under Medicaid to all pregnant women and infants with family incomes not in excess of 185 percent of the federal poverty level. If a premium is imposed, the amount of the premium shall not exceed 10 percent of the amount by which the family's income, less actual child care costs, exceeds 150 percent of the federal poverty level as required by Section 4101 (a) of the 1987 Medicaid Budget Reconciliation Agreement. The department shall implement this section by emergency regulation.

(b) Upon order of the Department of Finance, the State Controller shall transfer funds from Item 4260-101-001 of the Budget Act of 1988 to Item 4260-111-001 of the Budget Act of 1988 during the 1988-89 fiscal year for the purpose of funding outreach efforts for perinatal services.

(c) Notwithstanding subdivision (a), the state may limit implementation of this section during the 1988–89 fiscal year, based upon the availability of department funds. The department may use maternal and child health funds to finance the increased costs of implementing an expansion of Medi-Cal eligibility to women and children with incomes of up to 185 percent of federal poverty levels if both of the following conditions exist:

(1) The department has allocated for expenditure at least sixteen million dollars ($16,000,000) in funds redirected from the Medi-Cal program for that expansion.

(2) If, and to the extent, the department determines that estimates of costs based on actual data indicate that the funds are needed to cover costs.

(d) This section shall be fully implemented no later than April 1, 1990.

(e) To assist Medi-Cal eligible pregnant women in receiving prenatal care promptly, all pregnant women applying for Medi-Cal shall be determined to have an immediate need. Counties, within existing resources, shall expedite the eligibility determination process for all pregnant women on the basis of their immediate needs. Upon determination of eligibility, a Medi-Cal card shall be issued immediately.

(f) To the extent federal financial participation is available, the department shall apply the more liberal income deduction described in Section 1396a(r) of Title 42 of the United States Code when determining eligibility for pregnant women and infants under this section. The amount of this deduction shall be the difference between the 185 percent and the 200 percent federal poverty level applicable to the size of the family.

SEC. 258. Section 14148.8 of the Welfare and Institutions Code is amended to read:

14148.8. (a) The State Department of Health Services shall provide Medi-Cal reimbursements to alternative birth centers for facility-related delivery costs at a statewide all-inclusive rate per delivery that shall not exceed 80 percent of the average Medi-Cal reimbursement received by general acute care hospitals with Medi-Cal contracts and shall be based on an average hospital length of stay of 1.7 days. The reimbursement rate shall be updated annually and shall be based on the California Medical Assistance Commission's annually published legislative report of average contract rates for general acute care hospitals with Medi-Cal contracts. However, the reimbursement shall not exceed the alternative birth center's charges to any non-Medi-Cal patient for similar services.

(b) In order to be eligible for reimbursement pursuant to this section, an alternative birth center shall satisfy the following criteria as determined by the state department:

(1) At least 150 patients or 50 percent of the patient caseload served at the center each year, whichever is less, shall be Medi-Cal patients and low-income patients.

(2) The facility shall be currently certified as a comprehensive perinatal services provider. If not currently certified, the facility shall be certified with the first year of operation.

(3) The facilities may utilize certified nurse midwives, certified nurse practitioners, and clinical nurse specialists where appropriate.

(4) The facility shall meet the standards for certification established by the National Association of Childbearing Centers, including those relating to the proximity and involvement of hospitals, obstetricians, and pediatricians.

(5) The facility shall establish and maintain a quality assurance program.

(6) The facility shall maintain newborn followup care for at least one year.

(7) The gathering of data and preparing reports as required in subdivision (c).

(c) (1) Each alternative birth center awarded reimbursement pursuant to this section shall gather data and annually report outcome measures relating to the safety, cost-effectiveness, and patient acceptance of the center to the department to be made available upon request.

(2) The report shall include data on the incidence of maternal and infant death, preterm newborns, low birth weight newborns, maternal complications, newborn complications, cesarean sections, forcep-assisted deliveries, deliveries involving use of anesthesia, months of prenatal care, family involvement in childbirth, breast-feeding, infant immunizations, well baby care, adjusted cost per case for deliveries performed at the center, and cost per case for women transferred to hospitals for delivery.

(3) The department shall provide the Legislature with an annual report summarizing the data reported by the centers.

(4) The department shall, to the extent information and resources are available, as determined by the department, compare the data provided by the centers with information furnished by other providers of prenatal and delivery services. The department shall use the comparative data to determine for the Medi-Cal program whether alternative birth centers are cost-effective, improve access to prenatal care, reduce the anticipated incidence of maternal and newborn complications, and have a high degree of patient acceptance.

(d) The director shall administer this section and establish standards, procedures, and reimbursement rates, as the director deems necessary in carrying out this section. The establishment of the reimbursement rates is not required to be adopted as regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(e) Nothing in this act shall alter the scope of practice for any health care professional or authorize the delivery of health care services in a setting or in a manner not authorized by the Health and Safety Code or the Business and Professions Code.

SEC. 259. Section 14501 of the Welfare and Institutions Code is amended to read:

14501. The Office of Family Planning shall have all of the following functions, powers, and duties:

(a) To make available to citizens of the state of childbearing age comprehensive medical knowledge, assistance and services relating to the planning of families.

(b) To consult with state and local agencies which provide or administer family planning services and to participate in the formulation of regulations and other policy decisions governing the provision or administration of family planning services pursuant to state law or regulation.

(c) To establish goals and priorities for all state agencies providing or administering family planning services.

(d) To coordinate all family planning services and related programs conducted or administered by state agencies with the federal government so as to maximize the availability of these services by utilizing all available federal funds.

(e) To conduct a survey of all of the existing facilities within the state having to do with family planning and infertility and the rendering of advice and assistance on birth control techniques and information.

(f) To evaluate all existing programs and to establish in each county a viable program for the dispensation of family planning, infertility and birth control information and techniques.

(g) To develop and administer scientific investigation into problems of infertility and existing and new family planning and birth control techniques.

(h) To survey, evaluate, and establish programs of professional education and training for physicians, nurses, medical and nursing students, and other health care practitioners in rendering advice on family planning, infertility and birth control techniques and information.

(i) To enter into contracts and agreements with individuals, colleges, universities, associations, corporations, municipalities and other units of government as may be deemed necessary and advisable to carry out the general intent and purposes of this article which may provide for payment by the state within the limit of funds available for material, equipment and services.

(j) To submit a biennial report to the Legislature including, but not limited to, the subjects specified above.

(k) To annually update and analyze family planning data. The data shall include, but not be limited to, the following:

(1) Client number.
(2) Ethnicity.
(3) Family size.
(4) Method.
(5) Family income.
(6) Service type.
(7) Birthdate.
(8) Total billing amount.
(9) Pay source.
(10) Date of visit.

(11) Site number.

(12) County of residence.

(13) Updated estimates of women in need of subsidized family planning services from the federal government, when available, for all Office of Family Planning clinical service contractors by county of service, as well as statewide totals.

SEC. 260. Section 14618 of the Welfare and Institutions Code is repealed.

SEC. 261. Section 15452 of the Welfare and Institutions Code is repealed.

SEC. 262. Section 16500.5 of the Welfare and Institutions Code is amended to read:

16500.5. (a) (1) The Legislature hereby declares its intent to encourage the continuity of the family unit by:

(A) (i) Providing family preservation services.

(ii) For purposes of this subdivision, ''family preservation services'' means intensive services for families whose children, without these services, would be subject to any of the following:

(I) Be at imminent risk of out-of-home placement.

(II) Remain in existing out-of-home placement for longer periods of time.

(III) Be placed in a more restrictive out-of-home placement.

(B) Providing supportive services for those children within the meaning of Sections 360, 361, and 364 when they are returned to the family unit or when a minor will probably soon be within the jurisdiction of the juvenile court pursuant to Section 301.

(C) Providing counseling and family support services designed to eradicate the situation that necessitated intervention.

(2) The Legislature finds that maintaining abused and neglected children in foster care grows increasingly costly each year, and that adequate funding for family services which might enable these children to remain in their homes is not as readily available as funding for foster care placement.

(3) The Legislature further finds that other state bodies have addressed this problem through various systems of flexible reimbursement in child welfare programs that provide for more intensive and appropriate services to prevent foster care placement or significantly reduce the length of stay in foster care.

(4) Accordingly, it is the intent of the Legislature in enacting this section to establish a system of flexible reimbursement in order to evaluate its potential as an efficient, economical, and effective alternative to out-of-home placement of children.

(b) It is the intent of the Legislature that family preservation and support services in California conform to the federal definitions

contained in Section 431 of the Social Security Act as contained in Public Law 103-66, the Omnibus Budget Reconciliation Act of 1987. The Legislature finds and declares that California's existing family preservation programs meet the intent of this new federal initiative.

(c) (1) (A) (i) Any county, subject to the approval of the State Department of Social Services, may claim, on an annual basis, a portion of the state's share, and to the extent permitted, the federal share, of that county's AFDC-FC expenditures pursuant to subdivision (d) of Section 11450 for children subject to Sections 300, 301, 360, 361, and 364, in advance, provided the county conducts a program of family reunification and family maintenance services for families receiving these services pursuant to Sections 300, 301, 360, 364, and, as permitted by the department, children subject to Sections 601, 602, 726, and 727 of this code, and Section 7572.5 of the Government Code.

(ii) The department or a participating county may terminate a county's participation in the program upon 30 days' notice if the project is deemed unsuccessful by either party.

(iii) For each fiscal year of the program, a participating county may claim in advance an amount not to exceed an actual dollar amount that shall not exceed 25 percent of the state's share, and to the extent permitted, the federal share, of AFDC-FC funds to be expended by that county pursuant to subdivision (d) of Section 11450 for children subject to Sections 300, 301, 360, 361, and 364, and if permitted by the department, Sections 601, 602, 726, and 727, calculated for the first year of the project.

(iv) The amount of funds to be advanced annually shall be calculated at the beginning of the county's program described in this subdivision. The advance shall be determined by projecting the state share of AFDC-FC General Fund expenditures, and to the extent permitted, the federal share of AFDC-FC expenditures for abused or neglected children pursuant to Sections 300, 301, 360, 361, 364, and, if permitted by the department, Sections 601, 602, 726, and 727, based upon state, and to the extent permitted, federal expenditures for AFDC-FC for the previous five years.

(B) Except as provided in subparagraph (C), if the county's total AFDC-FC General Fund expenditures and, to the extent permitted by federal law, the federal share of AFDC-FC expenditures, added to the amount expended from the advance to the county exceeds, by more than 5 percent, the county's total projected AFDC-FC General Fund expenditures and, to the extent permitted by federal law, the federal share of AFDC-FC expenditures for that fiscal year, the county shall fund that portion of the overage in excess of 5 percent on a 100-percent basis. If the sum of a participating county's total AFDC-FC General Fund expenditures and, to the extent permitted by federal law, the federal share

of AFDC-FC expenditures for their children, added to the amount expended from the advance to the county, is less than the total projected AFDC-FC General Fund expenditures and, to the extent permitted by federal law, the federal share of AFDC-FC expenditures for their children for that fiscal year, the county shall receive 25 percent of the amount of the savings.

(C) (i) A participating county's share of expenditures in excess of the projected total may be reduced upon approval of the department. In determining this reduction, the department shall consider the increase in foster care placements of children in the homes of relatives as provided in Sections 361.3 and 16501.1, and in Section 505 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 42 U.S.C.A. Sec. 671(a)), which result in higher than projected AFDC-FC expenditures for children described in subparagraph (A). In considering the increase in relative foster care placements, the department shall adjust the total to consider only those children whose families have no history of receiving family preservation services.

(ii) This subparagraph shall become inoperative on the date that the director executes a declaration, which shall be retained by the director, specifying that the department has established a kinship care program that is separate and distinct from the existing foster care program and that provides services uniquely suited to the needs of children being cared for by their kin, or on January 1, 2002, whichever is earlier.

(2) Services which may be provided under this program may include, but are not limited to, counseling, mental health treatment and substance abuse treatment services, parenting, respite, day treatment, transportation, homemaking, and family support services. Each county that chooses to provide mental health treatment and substance abuse treatment shall identify and develop these services in consultation with county mental health treatment and substance abuse treatment agencies. Additional services may include those enumerated in Sections 16506 and 16507. The services to be provided pursuant to this section may be determined by each participating county. Each county may contract with individuals and organizations for services to be provided pursuant to this section. Each county shall utilize available private nonprofit resources in the county prior to developing new county-operated resources when these private nonprofit resources are of at least equal quality and costs as county-operated resources and shall utilize available county resources of at least equal quality and cost prior to new private nonprofit resources.

(3) Participating counties authorized by this subdivision shall provide specific programs of direct services based on individual family needs as reflected in the service plans to families of the following:

(A) Children who are dependent children not taken from physical custody of their parents or guardians pursuant to Section 364.

(B) Children who are dependent children removed from the physical custody of their parents or guardian pursuant to Section 361.

(C) Children who it is determined will probably soon be within the jurisdiction of the juvenile court pursuant to Section 301.

(D) Upon approval of the department, children who have been adjudged wards of the court pursuant to Sections 601 and 602.

(E) Upon approval of the department, families of children subject to Sections 726 and 727.

(F) Upon approval of the department, children who are determined to require out-of-home placement pursuant to Section 7572.5 of the Government Code.

(4) The services shall only be provided to families whose children will be placed in out-of-home care without the provision of services or to children who can be returned to their families with the provision of services.

(5) The services selected by any participating county shall be reasonable and meritorious and shall demonstrate cost-effectiveness and success at avoiding out-of-home placement, or reducing the length of stay in out-of-home placement. A county shall not expend more funds for services under this subdivision than that amount which would be expended for placement in out-of-home care.

(6) The program in each county shall be deemed successful if it meets the following standards:

(A) Enables families to resolve their own problems, effectively utilize service systems, and advocate for their children in educational and social agencies.

(B) Enhancing family functioning by building on family strengths.

(C) At least 75 percent of the children receiving services remain in their own home for six months after termination of services.

(D) During the first year after services are terminated:

(i) At least 60 percent of the children receiving services remain at home one year after services are terminated.

(ii) The average length of stay in out-of-home care of children selected to receive services who have already been removed from their home and placed in out-of-home care is 50 percent less than the average length of stay in out-of-home care of children who do not receive program services.

(E) Two years after the termination of family preservation services:

(i) The average length of out-of-home stay of children selected to receive services under this section who, at the time of selection, are in out-of-home care, is 50 percent less than the average length of stay in out-of-home care for children in out-of-home care who do not receive services pursuant to this section.

(ii) At least 60 percent of the children who were returned home pursuant to this section remain at home.

(7) Funds used for services provided under this section shall supplement, not supplant, child welfare services funds available for services pursuant to Sections 16506 and 16507.

(8) Each county participating in the program authorized by this section shall only continue to utilize the advance fund-claiming mechanism specified in paragraph (1) if the department finds the county has demonstrated the successful outcome of the county program, based on the criteria for success specified in paragraph (6).

(9) Programs authorized after the original pilot projects shall submit data to the department upon the department's request.

(d) (1) A county welfare department social worker or probation officer may, pursuant to an appropriate court order, return a dependent minor or ward of the court removed from the home pursuant to Section 361 to his or her home, with appropriate interagency family preservation program services.

(2) The county probation department may, with the approval of the State Department of Social Services, through an interagency agreement with the county welfare department, refer cases to the county welfare department for the direct provision of services under this subdivision.

(e) State foster care funds shall remain within the administrative authority of the county welfare department and shall be used only for placement services or placement prevention services or county welfare department administrative cost related to the interagency family preservation program.

(f) To the extent permitted by federal law, any federal funds provided for services to families and children may be utilized for the purposes of this section.

(g) A county may establish family preservation programs that serve one or more geographic areas of the county, subject to the approval of the State Department of Social Services.

SEC. 263. Section 18206 of the Welfare and Institutions Code is amended to read:

18206. (a) The director shall specify performance and quality assurance standards to be included in any experimental project for in-home supportive services undertaken pursuant to Section 18204 or extended pursuant to subdivision (a) of Section 18205.

(b) In the case of a project subject to subdivision (a) of Section 18205 that is conducted pursuant to a contract between a private provider and a county, the standards shall assure delivery of all required services at the time the services are needed, including weekends and nights; establish proper screening, training, and supervision of persons providing direct services; and institute frequent periodic quality control audits and

utilization review of all services. These standards 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.

(c) Quality control audits and utilization review shall be performed by entities that are independent of the county and the private contractor. The reports of the quality control audits and utilization review, excluding client confidential information, shall be made available to the public. The cost of those quality control audits and utilization review shall be considered as part of the county administrative costs for the managed contract.

(d) (1) One year after the effective date of any project for in-home supportive services established pursuant to Section 18204 or after the date of extension pursuant to subdivision (a) of Section 18205, the Auditor General shall commission a study to review the performance of that project. Any independent reviewer designated in an existing contract may be commissioned to perform the study.

(2) The study shall give special attention to both of the following:

(A) The health and welfare of the recipients under the project, including the degree to which all required services have been delivered, out-of-home placement rates, prompt response to recipient complaints, and any other issue the director deems relevant.

(B) The cost implications of the project, estimating the potential for ongoing savings, if any.

(3) The study may include a fiscal audit of the contract.

(e) Projects subject to Section 18204 relating to in-home supportive services and subject to this section shall, to the greatest extent possible, permit recipients to select their own qualified provider of care and set their own service schedule.

SEC. 264. Section 18214 of the Welfare and Institutions Code is repealed.

SEC. 265. Section 18240 of the Welfare and Institutions Code is amended to read:

18240. (a) Upon a request by the County of Los Angeles, the department may review and approve a waiver that would permit changes in earned income incentives available to residents in housing complexes in that county participating in the Jobs-Plus Community Revitalization Initiative for Public Housing Families.

(b) Waiver authority pursuant to subdivision (a) shall be limited to applicable working-age residents of the County of Los Angeles taking part in the initiative implemented at Jobs-Plus sites in the county.

(c) The waiver shall permit work-related financial incentives that are more generous than those otherwise operating pursuant to Chapter 2 (commencing with Section 11200) of Part 3.

(d) Waivers shall last only for the duration of the initiative referred to in subdivision (a).

(e) The department shall grant the requested waivers no sooner than 30 days after a report to the appropriate policy and fiscal committees of the Legislature of the nature, extent, and duration of the waivers.

(f) This article 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. 268. Section 1 of Chapter 74 of the Statutes of 1978, as amended by Section 1 of Chapter 317 of the Statutes of 1997, is amended to read:

Section 1. There is hereby granted to the City of Newport Beach and its successors all of the right, title, and interest of the State of California held by the state by virtue of its sovereignty in and to all that portion of the tidelands and submerged lands, whether filled or unfilled, bordering upon and under the Pacific Ocean or Newport Bay in the County of Orange, which were within the corporate limits of the City of Newport Beach, a municipal corporation, on July 25, 1919; the same to be forever held by the city and its successors in trust for the uses and purposes and upon the following express conditions:

(a) The lands shall be used by the city and its successors for purposes in which there is a general statewide interest, as follows:

(1) For the establishment, improvement, and conduct of a public harbor; and for the construction, maintenance, and operation thereon of wharves, docks, piers, slips, quays, ways, and streets, and other utilities, structures, and appliances necessary or convenient for the promotion or accommodation of commerce and navigation.

(2) For the establishment, improvement, and conduct of public bathing beaches, public marinas, public aquatic playgrounds, and similar recreational facilities open to the general public; and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any such uses.

(3) For the preservation, maintenance, and enhancement of the lands in their natural state and the reestablishment of the natural state of the lands so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.

(b) Except as otherwise provided in this section, the city or its successors shall not, at any time, grant, convey, give, or alienate the lands, or any part thereof, to any individual, firm, public or private entity, or corporation for any purposes whatever; except that the city or its

successors may grant franchises thereon for a period not exceeding 50 years for wharves and other public uses and purposes and may lease the lands, or any part thereof, for terms not exceeding 50 years for purposes consistent with the trust upon which the lands are held by the state and with the uses specified in this section.

(c) The lands shall be improved without expense to the state; provided, however, that nothing contained in this act shall preclude expenditures for the development of the lands for the purposes authorized by this act, by the state, or any board, agency, or commission thereof, or expenditures by the city of any funds received for such purpose from the state or any board, agency, or commission thereof.

(d) In the management, conduct, operation, and control of the lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith.

(e) The state shall have the right to use without charge any transportation, landing, or storage improvements, betterments, or structures constructed upon the lands for any vessel or other watercraft or railroad owned or operated by the state.

(f) There is hereby reserved to the people of the state the right to fish in the waters on the lands with the right of convenient access to the waters over the lands for such purpose, which rights shall be subject, however, to such rules and regulations as are necessary for the accomplishment of the purposes specified in subdivision (a).

(g) Notwithstanding any provision of this section to the contrary, the city may lease the lots located within Parcels A, B, and C described in Section 6 of this act for the purposes set forth in this act and for terms not to exceed 50 years. The consideration to be received by the city for such leases shall be the fair market rental value of such lots as finished subdivided lots with streets constructed and all utilities installed. The form of such leases and the range of consideration to be received by the city shall be approved by the State Lands Commission prior to the issuance of any such lease. All money received by the city from existing and future leases of those lots shall be deposited in the city tideland trust funds as provided in Section 2.

(h) With the approval of the State Lands Commission, the city may transfer portions of the lands granted by this act, or held pursuant to this act, to the state acting by and through the State Lands Commission, for lease to the Department of Fish and Game for an ecological reserve or wildlife refuge, or both, and other compatible uses to be undertaken by the department; provided, however, that, if at any time the Department of Fish and Game no longer uses those portions of the lands so transferred by the city to the state for those purposes, the lands so transferred shall revert to the city to be held pursuant to the provisions

of this act. Upon approving such a transfer from the city to the state, the State Lands Commission shall lease the lands so transferred to the Department of Fish and Game. The public benefits shall be the sole consideration to be received by the State Lands Commission from the Department of Fish and Game for that lease. Any and all income received by the Department of Fish and Game from the lands so leased shall be used only in connection with the department's improvement and administration of the leased lands.

(i) The city shall establish a separate tidelands trust fund or funds in such a manner as may be approved by the State Lands Commission, and the city shall deposit in the fund or funds all money received directly from, or indirectly attributable to, the granted tidelands in the city.

(j) In accordance with this act, the city, acting either alone or jointly with another local or state agency, may use revenues accruing from or out of the use of the granted tidelands or from any additional trust assets, for any or all of the purposes set forth in this act on public trust lands within the City of Newport Beach. Those revenues may be deposited in one or more reserve funds for use in accordance with the terms and conditions set forth in this act.

(k) As to the accumulation and expenditure of revenues for any single capital improvement on the public trust lands within the city involving an amount in excess of two hundred fifty thousand dollars ($250,000) in the aggregate, the city shall file with the State Lands Commission a detailed description of such capital improvement not less than 30 days prior to the time of any disbursement therefor or in connection therewith. The executive officer of the commission shall notify the city within 30 days from the date of the filing, if the proposed expenditure raises significant issues. Upon receipt of the notification, the city shall not make any disbursement in connection with the proposed expenditure for 60 days or until the commission has acted on the proposed expenditure, whichever is the shorter period. Within 60 days of the notification by the executive officer, the State Lands Commission may determine and notify the city that the capital improvement is not in the statewide interest and benefit or is not authorized by the provisions of subdivision (j). The State Lands Commission may request the opinion of the Attorney General on the matter; and, if it does so, a copy of the opinion shall be delivered to the city with the notice of its determination. If the State Lands Commission notifies the city that the capital improvement is not authorized, the city shall not disburse any revenue for or in connection with the capital improvement unless and until it is determined to be authorized by a final order or judgment of a court of competent jurisdiction. The city is authorized to bring suit against the state for the purpose of securing such an order or adjudication, which suit shall have priority over all other civil matters. Service of process shall

be made upon the Executive Officer of the State Lands Commission and the Attorney General, and the Attorney General shall defend the state in such suit. If judgment be given against the state in the suit, no costs shall be recovered against it.

(*l*) On June 30, 1978, and on June 30 of every third fiscal year thereafter, that portion of the city tideland trust revenues in excess of two hundred fifty thousand dollars ($250,000) remaining after deducting current and accrued operating costs and expenditures directly related to the operation or maintenance of tideland trust activities shall be deemed excess revenues. However, any funds deposited in a reserve fund for future capital expenditures or any funds used to retire bond issues for the improvement or operation of the granted lands shall not be deemed excess revenue. Capital improvements of the granted lands for purposes authorized by this act, including improvements on lands transferred to the state pursuant to subdivision (h) and paid for by the city, may be considered as expenditures for the purpose of determining excess revenues; provided, however, that if made after the effective date of this act they may be so considered only if made in accordance with subdivision (k). The excess revenue, as determined pursuant to this subdivision, shall be allocated as follows: 85 percent shall be transmitted to the Treasurer for deposit in the General Fund in the State Treasury, and 15 percent shall be retained by the city for deposit in the trust fund for use in any purpose authorized by subdivision (j) of this section.

(m) At the request of the city, the State Lands Commission shall grant an extension of time, not to exceed 90 calendar days, for filing any report or statement required by this act, that was not filed due to mistake or inadvertence.

(n) If the city fails or refuse to file with the State Lands Commission any report, statement, or document required by any provision of this act, or any extension period granted pursuant to this act, or fails or refuses to carry out the terms of this act, the Attorney General shall, upon the request of the State Lands Commission, bring such judicial proceedings for correction and enforcement as are appropriate and shall act to protect any improvements to, or assets situated upon, the granted lands or diverted therefrom. The State Lands Commission shall notify the Chief Clerk of the Assembly and the Secretary of the Senate within 30 days from the date of the occurrence of the failure or refusal and of actions taken as a result thereof.

(o) The State Lands Commission shall, from time to time, recommend to the Legislature such amendments as it may determine to be necessary in the terms and conditions of this act.

(p) The State Lands Commission shall, from time to time, institute a formal inquiry to determine that the terms and conditions of this act, and amendments thereto, have been complied with in good faith.

(q) If the commission determines any transaction or condition reported to the commission pursuant to this act to be in probable conflict with this act or with any other provision of law, the Attorney General shall, upon formal request of the State Lands Commission made only after a noticed public hearing at which the city has been given an opportunity to express fully any disagreement with the commission's findings or to describe any extenuating circumstances causing the violation, bring an action in the Superior Court in the County of Orange to declare that the grant under which the city holds the tidelands and submerged lands is revoked for gross and willful violation of this act or any other provision of law or to compel compliance with the requirements of this act and any other provision of law.

(r) The city shall cause to be made and filed annually with the State Lands Commission a detailed statement of receipts and expenditures by it of all rents, revenues, issues, and profits in any manner arising after the effective date of this act from the granted lands or any improvements, betterments, or structures thereon.

(s) The Department of Fish and Game shall establish the funds and make the deposits required by subdivision (i) of this section and shall prepare and file statements required by subdivision (r) as to any lands transferred to the state pursuant to subdivision (h).

(t) The provisions of Chapter 2 (commencing with Section 6701) of Part 2 of Division 6 of the Public Resources Code shall be applicable to this section. The provisions of Section 6359 of the Public Resources Code shall not be applicable to this section.

(u) Notwithstanding any other provision of this act, the city shall pay to the state all revenues received from the production of oil, gas, and other minerals derived from or attributable to the real property described in Section 6 of this act and the real property acquired by the city pursuant to subdivision (a) of Section 2 of this act. Whenever practicable, the city shall obtain the mineral rights in real property acquired pursuant to subdivision (a) of Section 2 of this act.

SEC. 269. Section 3 of Chapter 1523 of the Statutes of 1985 is repealed.

SEC. 270. Section 2 of Chapter 1495 of the Statutes of 1988 is amended to read:

Sec. 2. There is hereby created a pilot project on direct access contractor license verification systems. The goals of the pilot project shall be to determine the most appropriate method of providing cities, counties, or cities and counties with direct access to the licensure information, including bonding, maintained by the Contractors' State License Board and the most appropriate method of obtaining and providing timely and accurate workers' compensation insurance information on contractors to cities, counties, and cities and counties.

The project shall be conducted in not less than six cities, counties, or cities and counties, or other entities, as determined by the Registrar of Contractors, and upon assent thereto by those cities, counties, or cities and counties, or other entities. The Contractors' State License Board shall provide each participant in the pilot project with the capability to obtain verification of proper licensure, bonding, and workers' compensation insurance of contractors engaged in projects requiring licensure through direct access, to computerized contractor license records maintained by the Contractors' State License Board. The Contractors' State License Board shall consider methods of access including magnetized stripe cards, bar coded cards, microchip-based cards, related hardware and software, and telecommunication means. Their initial analysis shall include technical feasibility, operational effectiveness, maintenance, risk factors, and cost or benefit of these media. This analysis shall be done in coordination with the office of information technology of the Department of Finance. Risk factors shall include security information in accordance with the Records Management Act, the Information Practices Act, and state electronic data processing policies. The pilot project shall be in operation no less than one year in each of the participating entities.

SEC. 271. Section 1 of Chapter 1350 of the Statutes of 1989 is amended to read:

Section 1. (a) The Legislature finds and declares, based on adult correctional studies and experiences, the following:

(1) Maintaining a prisoner's family ties has a positive effect on the recidivism rate for offenders.

(2) Enhancing visitor services increases the frequency and quality of visits and, in the Department of Corrections, has demonstrated that violent behavior in institutions is thereby decreased.

(3) Enhancing visitor services provides prisoners with strong family support, which can have a stabilizing influence on the institution benefiting the prisoners, the staff, and the community.

(b) The Legislature further finds and declares that the location of the Northern California Youth Center and lack of services to assist visitors impedes visiting.

(c) The Department of the Youth Authority shall establish a visitor center at the Northern California Youth Center which visitor center shall provide, at a minimum, each of the following services to visitors, as needed:

(1) Outreach programs to wards' families.

(2) Assistance to visitors with transportation between public transit terminals in the Stockton area and the Northern California Youth Center.

(3) Crisis intervention.

(4) Information on visiting regulations and processes.

(5) Referral to other agencies and services.

(6) Parent education.

(7) A sheltered area for visitors who are waiting before or after visits.

In addition, the visitor center staff shall maintain working relations with the local community and institution.

(d) The visitor center may also provide child care services for the children of visitors.

(e) The goals of the Department of the Youth Authority in operating a visitor center shall be to achieve all of the following:

(1) Enhancing visitor services in order to provide wards with strong family support, which support can have a stabilizing influence on the institution and enhance the ward's parole performance.

(2) Improvement of ward institutional performance and behavior.

(f) For purposes of program evaluation, records shall be maintained of wards receiving visits and families receiving services. The wards shall be traced through their institutional and parole experiences. Their success and failure rate shall be compared to that of wards who did not receive visits or services.

(g) The department shall contract with a nonprofit agency to provide any of the services at the visitor center which the department is unable to provide.

(h) The establishment of a visitor center at the Northern California Youth Center is subject to the availability of funds provided to the department for purposes of this act through the annual Budget Act.

SEC. 272. Section 1 of Chapter 674 of the Statutes of 1990 is repealed.

SEC. 273. Section 1 of Chapter 1621 of the Statutes of 1990 is amended to read:

Section 1. The Legislature finds and declares the following:

(a) Federal programs in such areas as transportation, housing, space, and defense generate a major portion of the state's employment and are vital to those areas of our economy.

(b) California received $103 billion in federal expenditures in 1988, over $40 billion more than the second place State of New York.

(c) After increasing dramatically between 1979 and 1985, new authority for defense portions of federal spending has fallen in inflation-adjusted terms for five consecutive years. The Commission on State Finance projects that defense expenditures entering California during 1990 will be down for the second consecutive year, with an anticipated inflation adjusted loss of 5 percent. Shifts in United States Department of Defense policies may further accelerate that loss. Continued slowing in defense spending will adversely affect firms in California's high-technology and aerospace industries, including

aircraft manufacturing, space, electronics, and communications equipment.

(d) The impacts of these changing expenditure patterns will be felt particularly in the state's educational establishments. According to recent estimates by the Commission on State Finance, the University of California was the sixth largest recipient of Department of Defense contracts in 1988, receiving $1.3 billion in prime awards.

(e) The development of statewide policies mitigating the need for major economic adjustment and conversion efforts will require close private and public sector cooperation. To assist local governments, educational institutions, businesses, and individuals to understand and evaluate the impact of these shifting patterns on their budgeting, training needs, competitive possibilities, and job prospects, there is need to reauthorize in a modified form the current responsibility of the Commission on State Finance to develop and maintain an economic model capable of estimating the impact of federal expenditures on the state's economy and employment. The commission should:

(1) Develop strategies to maximize dissemination of Commission on State Finance federal expenditure data for the benefit of local and regional planners, state and local job training agencies, and economic development groups.

(2) Modify the content and format of the Commission on State Finance report, ''Impact of Federal Expenditures on the Economy,'' to provide macro economic data as well as microanalysis of specific topics of governmental finance where federal spending plays a significant role, such as in infrastructure finance, transportation, education, and health and welfare.

SEC. 274. Section 2 of Chapter 1012 of the Statutes of 1993 is repealed.

SEC. 274.5. Resolution Chapter 100 of the Statutes of 1995 is repealed.

SEC. 275. Section 2 of Chapter 881 of the Statutes of 1997 is amended to read:

Sec. 2. (a) The sum of four million dollars ($4,000,000) appropriated as Item 2240-104-0927 in the Budget Act of 1997, shall be allocated for the following purposes:

(1) Three million dollars ($3,000,000) appropriated as Item 2240-104-0927 in the Budget Act of 1997, shall be allocated to the Farmworker Housing Grant Fund for the purposes set forth in Section 50517.5 of the Health and Safety Code. Sponsors utilizing funds appropriated pursuant to this act shall consider using participants in job training, vocational education, and welfare-to-work programs in development projects.

(2) One million dollars ($1,000,000) appropriated as Item 2240-104-0927 in the Budget Act of 1997, shall be allocated to the Farmworker Housing Grant Fund for two demonstration programs that finance the acquisition, construction, or rehabilitation of housing that provides farmworkers with affordable, durable, low-maintenance housing options. The department may waive any requirements of Section 50517.5 of the Health and Safety Code and any regulations promulgated thereunder that are inconsistent with prompt and effective implementation of the demonstration programs described in this item. The demonstration programs shall be as follows:

(A) A program establishing prototype portable housing units that incorporate design research and are factory constructed and that will be sited in or adjacent to a migrant farmworker community facility in which job, housing, child care, health, and educational referrals are provided.

(B) A program containing other innovative models that are responsive to local needs, that bring together stakeholders to formulate appropriate local responses, that leverage grower and other private sector assistance, and that demonstrate the feasibility of innovative approaches to farmworker housing, including, but not limited to, dormitory and barracks-style housing, motel conversions, fast-track local permit approval of farmworker housing proposals, homeownership assistance and housing with scattered site management.

(C) The department shall submit a report on or before January 1, 1999, and biennially thereafter on or before each January 1 for which a report is due, to the Legislature on the administration and implementation of the demonstration programs. The report shall include, but not be limited to, the following information:

(i) The number and type of housing units.

(ii) The cost of the housing units.

(iii) The department's administrative costs and budget for implementation and management.

(iv) Details of the implementation and success of the various components of the projects.

(b) The department shall use funds appropriated for purposes of subparagraphs (A) and (B) to maximize other local, state, federal, or private funds and may waive the requirement that the sponsor make a contribution if the department determines that the sponsor does not have the capability to make the contribution.

(c) Of the funds appropriated for the purpose authorized in paragraphs (1) and (2) of subdivision (a), no more than two hundred seventy thousand dollars ($270,000) may be expended in any fiscal year for costs of administering the programs authorized thereby.

SEC. 276. This act is an urgency statute necessary for the immediate preservation of the public peace, 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 state and local agencies may be relieved of the burden of preparing unessential reports at the earliest possible time, it is necessary that this act take effect immediately.

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## CHAPTER 746

An act to add and repeal Chapter 14.6 (commencing with Section 50870) of Part 2 of Division 31 of the Health and Safety Code, relating to economic development, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

I am signing AB 31 with a deletion. This bill would create the Central Valley Infrastructure Grant Program to incentivize infrastructure improvements to eight Central Valley counties. This program was to receive funding from a $15 million appropriation contained in the 2001 Budget Act.

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 directing the Department of Housing and Community Development to use $12 million for this grant program and to revert $3 million to the General Fund.

GRAY DAVIS, Governor

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

SECTION 1. Chapter 14.6 (commencing with Section 50870) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

### CHAPTER 14.6. CENTRAL VALLEY INFRASTRUCTURE GRANT PROGRAM

50870. (a) The Central Valley Infrastructure Grant Program is hereby established in the department for the purpose of furthering economic development in rural small cities in the central San Joaquin Valley through developing and repairing necessary public infrastructure. Priority for funding shall be given to infrastructure projects such as streets, water, sewer, utilities, or telecommunication projects, or other necessary public infrastructure to facilitate business development, retention, or expansion.

(b) Money appropriated pursuant to Item 2240-101-0001 of Section 2.00 in the Budget Act of 2001 shall be used exclusively to provide for grants, not to exceed the sum of four hundred thousand dollars ($400,000) each, to rural small cities with a median income of 80 percent

or less of the state median income, within the Counties of Fresno, Kings, Kern, Tulare, Madera, Merced, Stanislaus, and San Joaquin.

(c) Grants administered pursuant to this section shall be used solely for projects qualifying for funding under this chapter.

(d) Grants shall be administered beginning September 1, 2001.

(e) For purposes of this section, ''small city'' means a city with a population of less than 100,000, or an unincorporated community with a population of less than 20,000, based on the estimated 2000 figures of the Demographic Research Unit of the Department of Finance.

(f) Notwithstanding any other provision of this chapter, not more than 15 percent of the financing may be expended for educational facilities, environmental mitigation measures, and parks and recreational facilities.

(g) For projects located in unincorporated communities, the contracting entity shall be the county in which the community is located. No county may receive more than one grant. As a condition of receiving funds, the grantee jurisdiction shall have an adopted housing element that the Department of Housing and Community Development 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.

(h) The program shall be operated through guidelines that shall include competitive criteria, determined by the department, which shall include, but not be limited to, project benefits, leverage of state funds, median income that is 80 percent or less of the state median income, unemployment levels, and other appropriate indicators of need. In addition, the guidelines shall ensure, to the extent feasible, a reasonable geographic distribution of funds. The guidelines shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 2 of Title 2 of the Government Code.

50871. The department shall determine how many grants were administered pursuant to this chapter, as well as the geographic distribution of these grants, and provide this information within the report that the department provides pursuant to Section 50408.

50872. 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.

SEC. 2. Due to the unique circumstances of the Counties of Fresno, Kings, Kern, Tulare, Madera, Merced, Stanislaus, and San Joaquin with respect to the growth needs of agricultural areas moving toward competitiveness in a technology-based economy, 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 1, inclusive, of this act is necessarily applicable only to the Counties of Fresno, Kings, Kern, Tulare, Madera, Merced, Stanislaus, and San Joaquin.

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 grants may be made pursuant to the Central Valley Infrastructure Grant Program at the earliest possible time to further economic development in rural small cities in the central San Joaquin Valley, it is necessary for this act to take effect immediately.

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## CHAPTER 747

An act to amend Sections 366.21, 366.26, 366.29, and 366.3 of, and to add Section 306.5 to, the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 306.5 is added to the Welfare and Institutions Code, to read:

306.5. In any case in which a social worker takes a minor into custody pursuant to Section 306, the social worker shall, to the extent that it is practical and appropriate, place the minor together with any siblings or half-siblings who are also detained or include in the report prepared pursuant to Section 319 a statement of his or her continuing efforts to place the siblings together or why those efforts are not appropriate.

SEC. 2. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or legal guardian, to the foster parents, relative caregivers, community

care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or legal guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency shall indicate that the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or legal guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or legal guardian, and make his or her recommendation for disposition. If the child is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, the report and recommendation may also take into account those factors described in subdivision (e) relating to the child's sibling group. If the recommendation is not to return the child to a parent or legal guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or legal guardian and counsel for the child with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or legal guardian, the social worker shall provide a summary of his or her recommendation for disposition to any court-appointed child advocate, foster parents, relative caregivers, certified foster parents who have been approved for adoption by the State

Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or legal guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided.

Whether or not the child is returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her

parent or legal guardian. The court shall also inform the parent or legal guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5 and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal or is a member of a sibling group described in paragraph (3) of subdivision (a) of Section 361.5, may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group, as described in paragraph (3) of subdivision (a) of Section 361.5, shall review and consider the social worker's report and recommendations. Factors the report shall address, and the court shall consider, may include, but need not be limited to, whether the sibling group was removed from parental care as a group, the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group. The court shall specify the factual basis for its finding that it is in the best interest of each child to schedule a hearing pursuant to Section 366.26 in 120 days for some or all of the members of the sibling group.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony

indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (b) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services have been provided or offered to the parent or legal guardian that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, that shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or legal guardian that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child. The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Whether or not the child is returned to his or her parent or legal guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or legal guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

For purposes of this subdivision, the court's decision to continue the case based on a finding or substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interests of the child.

The court shall inform the parent or legal guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.36 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only if the court does not continue the case to the permanency planning review hearing and there is clear and convincing evidence that reasonable services have been provided or offered to the parents or legal guardians.

(3) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent or legal guardian. The court shall continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents or legal guardians.

(2) A review of the amount of and nature of any contact between the child and his or her parents or legal guardians 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 legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, ''relative'' means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words ''great,'' ''great-great,'' or ''grand,'' or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(*l*) For purposes of this section, evidence of any of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.

(3) Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

SEC. 3. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of

Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section, if the postadoption contact agreement has been entered into voluntarily. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a preadoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of

subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

(E) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), (D), or (E), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or

services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), (D) or (E) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide

the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and for providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the child require the appointment of counsel. If the court finds that the interests of the child do require this protection, the court shall appoint counsel to represent the child. If the court finds that the interests of the child require the representation of counsel, counsel shall be appointed whether or not the child is able to afford counsel. The child shall not be present in court unless the child or the child's counsel so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The child is likely to be intimidated by a formal courtroom setting.

(3) The child is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served

with citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, ''preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) Except for subdivision (j), this section shall also apply to minors adjudged wards pursuant to Section 727.31.

SEC. 4. Section 366.29 of the Welfare and Institutions Code is amended to read:

366.29. (a) When a court, pursuant to Section 366.26, orders that a dependent child be placed for adoption, nothing in the adoption laws of this state shall be construed to prevent the prospective adoptive parent or parents of the child from expressing a willingness to facilitate postadoptive sibling contact. With the consent of the adoptive parent or parents, the court may include in the final adoption order provisions for the adoptive parent or parents to facilitate postadoptive sibling contact. In no event shall the continuing validity of the adoption be contingent upon the postadoptive contact, nor shall the ability of the adoptive parent or parents and the child to change residence within or outside the state be impaired by the order for contact.

(b) If, following entry of an order for sibling contact pursuant to subdivision (a), it is determined by the adoptive parent or parents that sibling contact poses a threat to the health, safety, or well-being of the adopted child, the adoptive parent or parents may terminate the sibling contact, provided that the adoptive parent or parents shall submit written

notification to the court within 10 days after terminating the contact, which notification shall specify to the court the reasons why the health, safety, or well-being of the adopted child would be threatened by continued sibling contact.

(c) Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, the jurisdiction of the juvenile court with respect to the dependency proceedings of that child shall be terminated. Nonetheless, the court granting the petition of adoption shall maintain jurisdiction over the child for enforcement of the postadoption contact agreement. The court may only order compliance with the postadoption contact agreement upon a finding of both of the following:

(1) The party seeking the enforcement participated, in good faith, in mediation or other appropriate alternative dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action.

(2) The enforcement is in the best interest of the child.

SEC. 5. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established, except as provided for in Section 366.29. The status of the child shall be reviewed every six months to ensure that the adoption or legal guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the legal guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except where the relative guardian objects, or upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or

otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a legal guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate legal guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the legal guardian's home, without terminating the legal guardianship, if services were provided to the child or legal guardian. If applicable, the report shall also identify recommended services to maintain the legal guardianship and set forth a plan for providing those services. If the petition to terminate legal guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the legal guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued legal guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising

the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or legal guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of the agency's compliance with the child welfare services case plan in making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) The adequacy of services provided to the child. The court shall consider the progress in providing the information and documents to the child, as described in Section 391. The court shall also consider the need for, and progress in providing, the assistance and services described in paragraphs (3) and (4) of subdivision (b) of Section 391.

(5) The extent of progress the parents or legal guardians have made toward alleviating or mitigating the causes necessitating placement in foster care.

(6) The likely date by which the child may be returned to and safely maintained in the home, placed for adoption, legal guardianship, or in another planned permanent living arrangement.

(7) Whether the child has any siblings under the court's jurisdiction, and, if any siblings exist, all of the following:

(A) The nature of the relationship between the child and his or her siblings.

(B) The appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002.

(C) 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.

(D) If the siblings are not placed together, the frequency and nature of the visits between siblings.

(E) The impact of the sibling relationships on the child's placement and planning for legal permanence.

The factors the court may consider as indicators of the nature of the child's sibling relationships 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.

(8) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

The reviewing body shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) Whether the final adoption order should include provisions for postadoptive sibling contact pursuant to Section 366.29.

(6) The progress of the search for an adoptive placement if one has not been identified.

(7) Any impediments to the adoption or the adoptive placement.

(8) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(9) The anticipated date by which an adoptive placement agreement will be signed.

(10) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall determine whether or not reasonable efforts to make and finalize a permanent placement for the child have been made.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held pursuant to subdivision (d) for a child in long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is being returned to the home of the parent, the child is not a proper subject for adoption, or no one is willing to accept legal guardianship. If the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, has determined it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a

compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, legal guardianship, or long-term foster care is the most appropriate plan for the child.

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.

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## CHAPTER 748

An act to amend Sections 8574.9, 8574.10, 8670.2, 8670.3, 8670.9, 8670.10, 8670.14, 8670.16, 8670.17, 8670.17.2, 8670.20, 8670.21, 8670.23, 8670.23.1, 8670.25, 8670.25.5, 8670.27, 8670.28, 8670.30.5, 8670.31, 8670.33, 8670.34, 8670.36.1, 8670.37, 8670.37.5, 8670.37.51, 8670.37.53, 8670.37.55, 8670.55, 8670.56.5, 8670.56.6, and 8670.64 of, to add Sections 8670.56.7 and 8670.68.1 to, to add, repeal, and add Section 8670.37.58 of, to repeal Section 8670.32 of, and to repeal and add Sections 8670.29 and 8670.30 of, the Government Code, relating to marine resources.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 8574.9 of the Government Code is amended to read:

8574.9. (a) The State Interagency Oil Spill Committee shall consist of all of the following persons:

(1) The administrator named by the Governor pursuant to Section 8670.4.

(2) The Chairperson of the State Lands Commission, or his or her designee.

(3) The Chairperson of the California Coastal Commission, or his or her designee.

(4) The Chairperson of the San Francisco Bay Conservation and Development Commission, or his or her designee. The chairperson of the commission shall only have voting and decisionmaking authority regarding matters under the jurisdiction of the commission.

(5) A designated representative from all of the following agencies:

(A) The Office of Emergency Services.

(B) The State Water Resources Control Board.

(C) The Department of Justice.

(D) The California Highway Patrol.

(E) The California National Guard.

(F) The Division of Oil and Gas in the Department of Conservation.

(G) The Department of Toxic Substances Control.

(H) The Department of Transportation.

(I) The Department of Parks and Recreation.

(J) The Department of Water Resources.

(K) The Department of Forestry and Fire Protection.

(L) The State Fire Marshal.

(M) The California regional water quality control boards (one representative).

(N) The Resources Agency.

(O) The California Environmental Protection Agency.

(P) The California Conservation Corps.

(Q) The Office of Environmental Health Hazard Assessment.

(R) The Division of Occupational Safety and Health in the Department of Industrial Relations.

(b) The administrator shall be the chairperson of the committee. The administrator shall ensure that personnel serve as staff to the committee.

SEC. 2. Section 8574.10 of the Government Code is amended to read:

8574.10. (a) The Review Subcommittee of the State Interagency Oil Spill Committee is hereby established. As used in this chapter, ''review subcommittee'' means the Review Subcommittee of the State Interagency Oil Spill Committee. The Director of Fish and Game, who shall serve as chair of the review subcommittee, the Executive Officer of the State Lands Commission, the Executive Director of the California Coastal Commission, the State Fire Marshal, the State Oil and Gas

Supervisor, the Executive Director of the State Water Resources Control Board, and the Executive Director of the San Francisco Bay Conservation and Development Commission, or their designees, shall constitute the members of the review subcommittee. The representative of the San Francisco Bay Conservation and Development Commission only shall have voting and decisionmaking authority regarding matters under the jurisdiction of the commission. The administrator may serve as the designee of the Director of Fish and Game.

(b) All regulations and guidelines adopted pursuant to Chapter 7.4 (commencing with Section 8670.1) and Division 7.8 (commencing with Section 8750) of the Public Resources Code, and amendments to the state oil spill contingency plan, shall, prior to adoption, be submitted to the review subcommittee for review and comment.

(c) Within 60 days from the date of receipt of regulations, guidelines, or amendments pursuant to subdivision (a), the review subcommittee shall review and submit comments to the submitting agency. Any recommendation of the review subcommittee shall be based on the standards of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, consisting of the provisions specified in Section 8670.1. This comment period may overlap any other comment periods required by law or allowed by the administrator.

(d) The comments and recommendations of the review subcommittee shall not be binding on the submitting agency. Prior to adoption, and within 30 days from the date of receipt of a response from the review subcommittee, the submitting agency shall respond in writing to the review subcommittee concerning all of the findings and recommendations of the review subcommittee. The submitting agency may reject the recommendations of the review subcommittee only if the submitting agency determines that the action it chooses more effectively furthers the purposes of, and more effectively complies with, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. Whenever the submitting agency departs from a finding or recommendation of the review subcommittee, the written response of the submitting agency shall state its rationale for concluding that its action more effectively furthers the purposes of, and more effectively complies with, that act. Any public hearing that is required by this chapter or any other statute shall be held after the submitting agency has filed a response to the review subcommittee.

SEC. 3. Section 8670.2 of the Government Code is amended to read:

8670.2. The Legislature finds and declares as follows:

(a) Each year, billions of gallons of crude oil and petroleum products are transported by vessel or pipeline across and through the marine waters of this state.

(b) Recent accidents in southern California, Alaska, and other parts of the nation have shown that marine transportation of oil can be a significant threat to the environment of sensitive coastal areas.

(c) Existing prevention programs are not able to reduce sufficiently the risk of significant discharge of petroleum into marine waters.

(d) Response and cleanup capabilities and technology are unable to remove consistently the majority of spilled oil when major oil spills occur in marine waters.

(e) California's coastal waters, estuaries, bays, and beaches are treasured environmental and economic resources which the state cannot afford to place at undue risk from an oil spill.

(f) Because of the inadequacy of existing cleanup and response measures and technology, the emphasis must be put on prevention, if the risk and consequences of oil spills are to be minimized.

(g) Improvements in the design, construction, and operation of tankers, terminals, and pipelines; improvements in marine safety; maintenance of emergency response stations and personnel; and stronger inspection and enforcement efforts are necessary to reduce the risks of and from a major oil spill.

(h) A major oil spill in marine waters is extremely expensive because of the need to clean up discharged oil, protect sensitive environmental areas, and restore ecosystem damage.

(i) Immediate action must be taken to improve control and cleanup technology in order to strengthen the capabilities and capacities of cleanup operations.

(j) California government should improve its response and management of oil spills that occur in marine waters.

(k) Those who transport oil through the marine waters of the state must meet minimum safety standards and demonstrate financial responsibility.

(*l*) The federal government plays an important role in preventing and responding to petroleum spills and it is in the interests of the state to coordinate with agencies of the federal government, including the Coast Guard, to the greatest degree possible.

(m) California has approximately 1,100 miles of coast, including four marine sanctuaries which occupy 88,767 square miles. The weather, topography, and tidal currents in and around California's coastal ports and waterways make vessel navigation challenging. The state's major ports are among the busiest in the world. Approximately 700 million barrels of oil are consumed annually by California, with over 500 million barrels being transported by vessel. The peculiarities of California's maritime coast require special precautionary measures regarding oil pollution.

SEC. 4. Section 8670.3 of the Government Code is amended to read:

8670.3. Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

(a) ''Administrator'' means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.

(b) (1) ''Best achievable protection'' means the highest level of protection that can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The administrator's determination of which measures provide the best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering all of the following:

(A) The protection provided by the measure.

(B) The technological achievability of the measure.

(C) The cost of the measure.

(2) The administrator shall not use a cost-benefit or cost effectiveness analysis or any particular method of analysis in determining which measures provide the best achievable protection. The administrator shall instead, when determining which measures provide best achievable protection, give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(c) (1) ''Best achievable technology'' means that technology that provides the greatest degree of protection, taking into consideration both of the following:

(A) Processes that are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development.

(B) Processes that are currently in use anywhere in the world.

(2) In determining what is the best achievable technology pursuant to this chapter, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(d) ''Dedicated response resources'' means equipment and personnel committed solely to oil spill response, containment, and cleanup that are not used for any other activity that would adversely affect the ability of that equipment and personnel to provide oil spill response services in the timeframes for which the equipment and personnel are rated.

(e) ''Environmentally sensitive area'' means an area defined pursuant to the applicable area contingency plans, as created and revised by the Coast Guard and the administrator.

(f) ''Local government'' means any chartered or general law city, chartered or general law county, or any city and county.

(g) (1) ''Marine facility'' means any facility of any kind, other than a tank ship or tank barge, that is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility is either of the following:

(A) Subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

(B) Placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank.

(2) For the purposes of this chapter, ''marine facility'' includes a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform.

(3) For the purposes of this chapter, ''marine facility'' does not include a small craft refueling dock.

(h) (1) ''Marine terminal'' means any marine facility used for transferring oil to or from a tank ship or tank barge.

(2) ''Marine terminal'' includes, for purposes of this chapter, all piping not integrally connected to a tank facility, as defined in subdivision (1) of Section 25270.2 of the Health and Safety Code.

(i) ''Marine waters'' means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

(j) ''Mobile transfer unit'' means a small marine fueling facility that is a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact marine waters.

(k) ''Non-dedicated response resources'' means those response resources identified by an OSRO for oil spill response activities that are not dedicated response resources.

(*l*) ''Nonpersistent oil'' means a petroleum-based oil, such as gasoline, diesel, or jet fuel, that evaporates relatively quickly and is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645° Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700° Fahrenheit.

(m) ''Nontank vessel'' means a vessel of 300 gross tons or greater that carries oil, but does not carry that oil as cargo.

(n) ''Oil'' means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(o) ''Oil spill cleanup agent'' means a chemical, or any other substance, used for removing, dispersing, or otherwise cleaning up oil or any residual products of petroleum in, or on, any of the waters of the state.

(p) ''Oil spill contingency plan'' or ''contingency plan'' means the oil spill contingency plan required pursuant to Article 5 (commencing with Section 8670.28).

(q) (1) ''Oil Spill Response Organization'' or ''OSRO'' means an individual, organization, association, cooperative, or other entity that provides, or intends to provide, equipment, personnel, supplies, or other services directly related to oil spill containment, cleanup, or removal activities.

(2) A ''rated OSRO'' means an OSRO that has received a satisfactory rating from the administrator for a particular rating level established pursuant to Section 8670.30.

(3) ''OSRO'' does not include an owner or operator with an oil spill contingency plan approved by the administrator or an entity that only provides spill management services, or who provides services or equipment that are only ancillary to containment, cleanup, or removal activities.

(r) ''Onshore facility'' means any facility of any kind which is located entirely on lands not covered by marine waters.

(s) (1) ''Owner'' or ''operator'' means any of the following:

(A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility.

(C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or marine facility immediately beforehand.

(D) An entity of the state or local government that acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters.

(2) ''Owner'' or ''operator'' does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility.

(3) ''Operator'' does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(t) ''Person'' means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. ''Person'' also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(u) ''Pipeline'' means any pipeline used at any time to transport oil.

(v) ''Reasonable worst case spill'' means, for the purposes of preparing contingency plans for a nontank vessel, the total volume of the largest fuel tank on the nontank vessel.

(w) ''Responsible party'' or ''party responsible'' means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(x) ''Small craft'' means any vessel, other than a tank ship or tank barge, that is less than 20 meters in length.

(y) ''Small craft refueling dock'' means a waterside operation that dispenses only nonpersistent oil in bulk and small amounts of persistent lubrication oil in containers primarily to small craft and meets both of the following criteria:

(1) Has tank storage capacity not exceeding 20,000 gallons in any single storage tank or tank compartment.

(2) Has a total usable tank storage capacity not exceeding 75,000 gallons.

(z) ''Small marine fueling facility'' means either of the following:

(1) A mobile transfer unit.

(2) A fixed facility that is not a marine terminal, that dispenses primarily nonpersistent oil, that may dispense small amounts of persistent oil, primarily to small craft, and that meets all of the following criteria:

(A) Has tank storage capacity not exceeding 40,000 gallons in any single storage tank or storage tank compartment.

(B) Has total usable tank storage capacity not exceeding 75,000 gallons.

(C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.

(aa) ''Spill'' or ''discharge'' means any release of at least one barrel (42 gallons) of oil into marine waters that is not authorized by any federal, state, or local government entity.

(bb) ''State Interagency Oil Spill Committee'' means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(cc) ''State oil spill contingency plan'' means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(dd) ''Tank barge'' means any vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(ee) ''Tank ship'' means any self-propelled vessel that is constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(ff) ''Tank vessel'' means a tank ship or tank barge.

(gg) ''Vessel'' means any watercraft or ship of any kind, including every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

(hh) ''Vessel carrying oil as secondary cargo'' means any vessel that does not carry oil as a primary cargo, but does carry oil in bulk as cargo or cargo residue.

SEC. 5. Section 8670.9 of the Government Code is amended to read:

8670.9. (a) The administrator shall enter into discussions on behalf of the state with the States of Alaska, Oregon, and Washington, for the purpose of developing an interstate compact regarding oil transport by tank ship or tank barge. The compact shall address all of the following:

(1) Coordination of vessel safety and traffic.

(2) Spill prevention equipment and response required on tank ships and tank barges and at terminals.

(3) The availability of oil spill response and cleanup equipment and personnel.

(4) Other matters that may relate to the transport of oil and oil spill prevention, response, and cleanup.

(b) The administrator shall coordinate the development of the interstate compact with the Coast Guard, the Province of British Columbia in Canada, and the Republic of Mexico.

SEC. 6. Section 8670.10 of the Government Code is amended to read:

8670.10. (a) In coordination with all appropriate federal, state, and local government entities, the administrator shall periodically carry out announced and unannounced drills to test response and cleanup operations, equipment, contingency plans, and procedures implemented under this chapter. If practical, the administrator shall coordinate drills with drills carried out by the State Lands Commission and the California Coastal Commission to test prevention operations, equipment, and procedures. In carrying out announced drills, the administrator shall coordinate with the private entities involved in the drill. Each state and

local entity, each rated OSRO, and each operator shall cooperate with the administrator in carrying out these drills.

(b) On or before June 30, 2002, the administrator shall establish performance standards that each operator and rated OSRO shall meet during the drills carried out pursuant to subdivision (a). The standards shall include, but are not limited to, a standard for the time allowable for adequate response, and shall also specify conditions for canceling a drill because of hazardous or other operational circumstances that may exist at a facility. The standards shall specify the protections that the administrator determines are necessary for any environmentally sensitive area, as defined by the administrator.

(c) The costs incurred by an operator to comply with this section and regulations adopted pursuant to this section are the responsibility of the operator. All costs incurred by a local, state, or federal agency in conjunction with participation in a drill pursuant to this chapter shall be borne by each respective agency.

(d) The administrator shall issue a report after every drill that evaluates the performance of the participants.

SEC. 7. Section 8670.14 of the Government Code is amended to read:

8670.14. The administrator shall coordinate the oil spill prevention and response programs and marine facility, tank ship, and tank barge safety standards of the state with federal programs to the maximum extent possible.

SEC. 8. Section 8670.16 of the Government Code is amended to read:

8670.16. The administrator shall take any action necessary and appropriate to promote the adoption of statutes or regulations by the federal government that establish all of the following requirements:

(a) Each tank ship using ports in the state shall have alarms on the bridge that give warning any time an attempt is made to control the tank ship manually while the autopilot is engaged, whether the attempt is successful or not, or any time the autopilot fails.

(b) Each tank ship using ports in the state shall have in good working order, all of the following:

(1) Two ''VHF'' bridge-to-bridge radiotelephones.

(2) One single-side band radiotelephone.

(3) One satellite communication device.

(4) Two collision avoidance radar devices, at least one of which has automatic collision avoidance (ARPA) capability.

(c) Each tank ship and tank barge shall use only shipping lanes designed to significantly reduce the likelihood of oil spills reaching sensitive environmental areas, including, but not limited to, the Channel Islands, Big Sur, the Farallon Islands, and the North Coast.

SEC. 9. Section 8670.17 of the Government Code is amended to read:

8670.17. (a) The administrator shall adopt regulations regarding the equipment, personnel, and operation of vessels to and from marine terminals that are used to transfer oil.

(b) The regulations shall be adopted, and thereafter periodically revised, to ensure the best achievable protection of the public health and safety and the environment.

(c) The regulations adopted pursuant to this section shall include, but not be limited to, both of the following:

(1) A requirement that the vessel has functional equipment that is compatible with any vessel traffic advisory control system that may be established along the California coast.

(2) A requirement that the vessel, while in marine waters, has at all times at least one person on the bridge who is able to communicate fluently and effectively both in English and in the language of the master of the vessel.

SEC. 10. Section 8670.17.2 of the Government Code is amended to read:

8670.17.2. (a) The administrator shall adopt regulations governing tugboat escorts for tank ships and tank barges entering, leaving, or navigating in the harbors of the state. The regulations shall be adopted, and thereafter periodically revised, to ensure the best achievable protection of the public health and safety and the environment.

(b) The regulations adopted pursuant to subdivision (a) shall include, but not be limited to, a determination of the circumstances under which tank ships and tank barges are required to be accompanied by a tugboat or tugboats of sufficient size, horsepower, and pull capability while entering, leaving, or navigating in the harbors of the state. In making that determination, the administrator shall be guided by the recommendations of the harbor safety committees established pursuant to Section 8670.23.

(c) The administrator may adopt regulations that differ from the recommendations of the harbor safety committees only after a public hearing. If the administrator proposes to adopt regulations that require the use of tugboat escorts in fewer instances in the harbors of San Francisco, San Pablo, and Suisun Bays than that which is recommended by the Harbor Safety Committee for San Francisco, San Pablo, and Suisun Bays, the administrator shall, in a public hearing, adopt findings, based on substantial evidence, that the proposed regulations provide adequate protection and are consistent with the purposes of this chapter.

(d) A public hearing held in accordance with Section 11346.8 shall satisfy the public hearing requirement of subdivision (c).

(e) The Legislature hereby finds and declares that the appropriate use of tugboat escorts can improve vessel safety, particularly in the harbors of San Francisco, San Pablo, and Suisun Bays, and that the regulations concerning tugboat escorts in those harbors shall be adopted as quickly as practicable and may be adopted before the adoption of all other regulations required by this section.

SEC. 11. Section 8670.20 of the Government Code is amended to read:

8670.20. (a) For the purposes of this section, ''vessel'' means a vessel, as defined in Section 21 of the Harbors and Navigation Code, of 300 gross registered tons or more.

(b) Any party responsible for a vessel shall notify the Coast Guard within one hour of a disability if the disabled vessel is within 12 miles of the shore of this state. The administrator and the Office of Emergency Services shall request the Coast Guard to notify the Office of Emergency Services as soon as possible after the Coast Guard receives notice of a disabled vessel within 12 miles of the shore of this state. The administrator shall attempt to negotiate an agreement with the Coast Guard governing procedures for Coast Guard notification to the state regarding disabled vessels.

(c) Whenever the Office of Emergency Services receives notice of a disabled vessel, the office shall immediately notify the administrator. If the administrator receives notice from any other source regarding the presence of a disabled vessel within 12 miles of the shore of this state, the administrator shall immediately notify the Office of Emergency Services.

(d) For the purposes of this section, a vessel shall be considered disabled if any of the following occurs:

(1) Any accidental or intentional grounding that creates a hazard to the environment or the safety of the vessel.

(2) Loss of main propulsion or primary steering or any component or control system that causes a reduction in the maneuvering capabilities of the vessel. For the purposes of this paragraph, ''loss'' means that any system, component, part, subsystem, or control system does not perform the specified or required function.

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including, but not limited to, fire, flooding, or collision with another vessel.

(4) Any occurrence not meeting the above criteria, but that creates the serious possibility of an oil spill or an occurrence that may result in an oil spill.

(e) For the purposes of this section, a tank barge shall be considered disabled if any of the following occur:

(1) The towing mechanism becomes disabled.

(2) The tugboat towing the tank barge becomes disabled through occurrences specified in subdivision (d).

SEC. 12. Section 8670.21 of the Government Code is amended to read:

8670.21. (a) As used in this section, the following terms have the following meaning:

(1) ''Vessels'' means vessels as defined in Section 21 of the Harbors and Navigation Code.

(2) ''VTS system'' means a vessel traffic service system.

(b) The administrator shall negotiate an agreement with the Coast Guard, appropriate port agencies, or appropriate organizations, for a VTS system to protect the harbors of this state. The administrator may include in the agreement provisions for vessel traffic monitoring and communications systems for areas of the coast outside of harbors or negotiate a separate agreement for that purpose. The purpose of a VTS system and a vessel traffic monitoring and communications system shall be to aid navigation by providing satellite tracking, radar, or other information regarding ship locations and traffic to prevent collisions and groundings.

(c) The administrator shall, in consultation with the Coast Guard, develop a plan for implementing VTS systems pursuant to subdivision (b) for the Ports of Los Angeles and Long Beach, the Harbors of San Francisco, San Pablo, and Suisun Bays, the Santa Barbara Channel, and any other area where establishing a VTS system or a vessel monitoring and communications system is recommended by the Coast Guard. The plan shall provide for the areas described in this subdivision, and for any other system and areas that are recommended by the Coast Guard, or recommended by the administrator and approved by the Coast Guard. Only systems that will be operated by the Coast Guard, or that will have direct communication with a Coast Guard officer who has Captain of the Port enforcement authority, shall be included in the plan. The plan shall be amended periodically to reflect any changes in Coast Guard recommendations or operations, and any changes in the agreements entered into pursuant to subdivision (b). The plan shall, to the extent allowable given federal requirements, provide for the best achievable protection.

(d) (1) The administrator shall attempt to provide funding for VTS systems and vessel monitoring and communications systems through voluntary funding, or services in kind, provided by the maritime industry. If agreement on voluntary funding or services in kind cannot be reached, the administrator may establish a fee system that reflects the commercial maritime activity of each of the respective harbors or areas for which a VTS system or a vessel monitoring and communications

system is established. Using that fee system, the administrator shall fund VTS systems and vessel monitoring and communications systems.

(2) The money collected pursuant to this subdivision shall be deposited in the Vessel Safety Account, which is hereby created in the Oil Spill Prevention and Administration Fund. The money in the Vessel Safety Account is hereby continuously appropriated for the sole purpose of funding VTS systems and vessel monitoring and communications systems. Other than the fees imposed pursuant to this subdivision that are deposited in the Vessel Safety Account, no funds from the Oil Spill Prevention and Administration Fund may be used to pay for VTS systems or vessel traffic monitoring and communications systems.

(3) The administrator shall adopt regulations to implement this subdivision. The administrator may adopt regulations prohibiting tank barges and tank ships from accepting or unloading oil at marine terminals if a tank barge or tank ship is not in compliance with required VTS system or vessel traffic monitoring and communications system equipment.

(e) If a VTS system covers waters outside the jurisdiction of a local port authority, the administrator may grant the money that is determined to be necessary for the purchase and installation of equipment required for the establishment or expansion of the VTS system. Those grants may be made from the Oil Spill Response Trust Fund in accordance with Section 8670.49, as individual and nonrecurring appropriations through the budget process, but shall not exceed the amount of interest earned from money in that fund.

(f) (1) The Marine Exchange of Los Angeles-Long Beach Harbor, Inc., a corporation organized under the Non-Profit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), may operate a VTS system in the VTS area described in Section 445 of the Harbors and Navigation Code if the VTS system is approved by the Coast Guard and certified by the administrator as meeting the requirements of this chapter. The marine exchange shall cooperate fully with the administrator in the development and implementation of that VTS system. Upon certification by the administrator that the Coast Guard has commenced operation of a VTS system for the VTS area, the authorization for the marine exchange to operate a VTS system shall terminate.

(2) The Port of Los Angeles and the Port of Long Beach may impose fees upon all covered vessels, as defined in Section 445.5 of the Harbors and Navigation Code, for the funding of the VTS system operated by the marine exchange.

(3) No vessel that is required to comply with Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code shall assert any claim against the marine exchange or

any officer, director, employee, or representative of the marine exchange for any damage, loss, or expense, including any rights of indemnity or other rights of any kind, sustained by that vessel or its owners, agents, charterers, operators, crew, or third parties arising out of, or connected with, directly or indirectly, the marine exchange's operation of the vessel traffic service, even though resulting in whole or in part from the negligent acts or omissions of the marine exchange or of an officer, director, employee, or representative of the marine exchange.

(4) Each vessel required to comply with Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code shall defend, indemnify, and hold harmless the marine exchange and its officers, directors, employees, and representatives from any and all claims, suits, or actions of any nature by whomsoever asserted, even though resulting or alleged to have resulted from negligent acts or omissions of the marine exchange or of an officer, director, employee, or representative of the marine exchange.

(5) Nothing in this subdivision affects any liability or rights that may arise by reason of the gross negligence or intentional or willful misconduct of the marine exchange or of an officer, director, employee, or representative of the marine exchange in the operation of the VTS system, including any liability pursuant to subdivision (c) of Section 449.5 of the Harbors and Navigation Code.

(6) The marine exchange and its officers and directors are subject to Section 5047.5 of the Corporations Code to the extent that the marine exchange meets the criteria specified in that section.

(7) Nothing in this section shall be deemed to include the marine exchange or its officers, directors, employees, or representatives within the definition of ''responsible party'' pursuant to Section 8670.3 for purposes of this chapter.

(8) On or before January 1, 1997, and every two years thereafter, the marine exchange shall submit a report containing a complete description of the VTS system operated by the marine exchange to the administrator. Upon receiving that biennial report, the administrator shall determine, after a public hearing, whether the elements and operation of the VTS system are consistent with the Harbor Safety Plan for the Ports of Los Angeles and Long Beach developed pursuant to Section 8670.23.1 and the standards for the statewide vessel traffic service systems plan developed pursuant to subdivision (c). If the administrator determines that the VTS system is inconsistent with the Harbor Safety Plan for the Ports of Los Angeles and Long Beach developed pursuant to Section 8670.23.1 or with the statewide vessel traffic service systems plan developed pursuant to subdivision (c), the administrator shall issue an order to the marine exchange specifying modifications to the VTS system to eliminate the inconsistencies. If the marine exchange has not

complied with that order within six months of issuance, the administrator may, in addition to, or in lieu of, any other enforcement action authorized by this chapter or Article 4 (commencing with Section 445) of Chapter 1 of Division 3 of the Harbors and Navigation Code, and after a public hearing, administratively revoke the authorization for the marine exchange to operate a VTS system. If authorization for the marine exchange to operate a VTS system is revoked, the administrator shall take any action necessary to expeditiously establish a VTS system for the VTS area described in Section 445 of the Harbors and Navigation Code. The action may include the assessment of fees on vessels, port users, and ports, and needed expenditures, as provided in subdivision (d).

(g) Any VTS system or vessel traffic monitoring and communications system that is determined to be necessary by the administrator, but has not been approved by the Coast Guard, may not be included in the plan until that inclusion has been given specific approval by the Legislature, by statute.

(h) It is the intent of the Legislature that VTS systems and vessel traffic monitoring and communications systems be completed and operated by the Coast Guard, except that, with respect to the VTS area described in Section 445 of the Harbors and Navigation Code, a VTS system may be operated by the Marine Exchange of Los Angeles-Long Beach, Inc., pursuant to subdivision (f).

SEC. 13. Section 8670.23 of the Government Code is amended to read:

8670.23. (a) The administrator shall establish Harbor Safety Committees for the Harbors of San Diego; Los Angeles/Long Beach; Port Hueneme; San Francisco, San Pablo, and Suisun Bays; and Humboldt Bay.

(b) The administrator shall appoint to each harbor safety committee, for a term of three years, all of the following members:

(1) A designee of each of the port authorities within the harbor, except that the Harbor Safety Committee for the Harbor of San Francisco, San Pablo, and Suisun Bays shall have four designees.

(2) A representative of tank ship operators, except that the Harbor Safety Committee for the Harbors of San Francisco, San Pablo, and Suisun Bays shall have two representatives.

(3) A representative of the pilot organizations within the harbor.

(4) A representative of dry cargo vessel operators, except that the Harbor Safety Committee for the Harbors of San Francisco, San Pablo, and Suisun Bays shall have two representatives.

(5) A representative of commercial fishing or pleasure boat operators.

(6) A representative of a recognized nonprofit environmental organization that has as a purpose the protection of marine resources.

(7) A representative of the California Coastal Commission, except that for the Harbor Safety Committee for San Francisco, San Pablo, and Suisun Bays, the administrator shall appoint a representative of the San Francisco Bay Conservation and Development Commission.

(8) A representative from a recognized labor organization involved with operations of vessels.

(9) A representative of the Captain of the Port from the Coast Guard, the Corps of Engineers, and the Navy to the extent that each consents to participate on the committee.

(10) A representative of tug or tank barge operators, who is not also engaged in the business of operating either tank ships or dry cargo vessels, except that the Harbor Safety Committee for San Francisco, San Pablo, and Suisun Bays shall have one representative of tug operators and one representative of tank barge operators, neither of whom shall also be engaged in the business of operating either tank ships or dry cargo vessels.

(11) A harbor safety committee may petition the administrator with a request for the additional appointment of up to five at large members who are needed to conduct the harbor safety committee business and who reflect the makeup of the local maritime community. The approval of this petition shall be at the sole discretion of the administrator.

(c) The members appointed from the categories listed in paragraphs (1), (2), (3), (4), (8), and (10) of subdivision (b) shall have navigational expertise. An individual is considered to have navigational expertise if the individual meets any of the following conditions:

(1) Has held or is presently holding a Coast Guard Merchant Marine Deck Officer's license.

(2) Has held or is presently holding a position on a commercial vessel that includes navigational responsibilities.

(3) Has held or is presently holding a shoreside position with direct operational control of vessels.

(4) Has held or is currently holding a position having responsibilities for permitting or approving the docking of vessels in and around harbor facilities.

(d) The administrator shall appoint a chairperson for each harbor safety committee from the membership specified in subdivision (b). Each member of a harbor safety committee shall be reimbursed for actual and necessary expenses incurred in the performance of committee duties.

SEC. 14. Section 8670.23.1 of the Government Code is amended to read:

8670.23.1. (a) Each harbor safety committee established pursuant to Section 8670.23 shall be responsible for planning for the safe navigation and operation of tank ships, tank barges, and other vessels

within each harbor. Each committee shall prepare a harbor safety plan, encompassing all vessel traffic within the harbor.

(b) The administrator shall adopt regulations for harbor safety plans in consultation with the committees of those harbors listed in Section 8670.23, and other affected parties. The regulations shall require that the plan contain a discussion of the competitive aspects of the recommendations of the harbor safety committee.

(c) In adopting regulations for harbor safety plans, the administrator shall give highest priority to the development of regulations concerning tugboat escorts as specified in Section 8670.17.2 and shall expeditiously adopt that portion of the regulations so that the Harbor Safety Committee for San Francisco, San Pablo, and Suisun Bays will be able to expeditiously comply with subdivision (b).

(d) The regulations shall ensure that each harbor safety plan includes all of the following elements:

(1) A recommendation determining when tank vessels are required to be accompanied by a tugboat or tugboats, of sufficient size, horsepower, and pull capability while entering, leaving, or navigating in the harbor. The Harbor Safety Committee for San Francisco, San Pablo, and Suisun Bays shall give its highest priority to the adoption of tugboat escort recommendations and shall immediately adopt interim recommendations prior to the completion of the entire harbor safety plan. The administrator shall be guided by the recommendations of the Harbor Safety Committee when adopting regulations pursuant to Section 8670.17.2.

(2) A review and evaluation of the adequacy of, and any changes needed in, all of the following:

(A) Anchorage designations and sounding checks.

(B) Communications systems.

(C) Small vessel congestion in shipping channels.

(D) Placement and effectiveness of navigational aids, channel design plans, and the traffic and routings from port construction and dredging projects.

(3) Procedures for routing vessels during emergencies that impact navigation.

(4) Bridge management requirements.

(5) Suggested mechanisms to ensure that the provisions of the plan are fully and regularly enforced.

(6) A recommendation as to whether establishing or expanding VTS systems within the harbors is desirable.

(7) A recommendation for funding VTS systems and other projects.

(e) Each harbor safety plan shall be submitted to the administrator by December 31, 1991. The administrator shall review the plan for

consistency with the regulations and shall approve the plans or give reasons for their disapproval.

(f) Upon approving the harbor safety plans, the administrator shall, in consultation with the harbor safety committees listed in Section 8670.23, implement the plans. The administrator shall adopt regulations necessary to implement the plans. When federal authority or action is required to implement a plan, the administrator shall petition the appropriate federal agency or the United States Congress, as may be necessary.

(g) On or before July 1 of each year, each harbor safety committee shall revise its respective harbor safety plan and report its findings and recommendations to the administrator concerning the safety of its harbor or harbors and any recommendations for improving vessel safety in the harbor or harbors by amending the provisions of the harbor safety plan, or through other means.

SEC. 15. Section 8670.25 of the Government Code is amended to read:

8670.25. (a) Any person who, without regard to intent or negligence, causes or permits any oil to be discharged in or on the marine waters of the state shall immediately contain, cleanup, and remove the oil in the most effective manner which minimizes environmental damage and in accordance with the applicable contingency plans, unless ordered otherwise by the Coast Guard or the administrator.

(b) If there is a spill, an owner or operator shall comply with the applicable oil spill contingency plan approved by the administrator.

SEC. 16. Section 8670.25.5 of the Government Code is amended to read:

8670.25.5. (a) Without regard to intent or negligence, any party responsible for the discharge or threatened discharge of oil in marine waters shall report the discharge to the Office of Emergency Services pursuant to Section 25507 of the Health and Safety Code.

(b) Immediately upon receiving notification pursuant to subdivision (a), the Office of Emergency Services shall notify the administrator, the State Lands Commission, the California Coastal Commission, the California regional water quality control board having jurisdiction over the location of the discharged oil, and take the actions required by subdivision (d) of Section 8589.7. If the spill has occurred within the jurisdiction of the San Francisco Bay Conservation and Development Commission, the Office of Emergency Services shall notify that commission. Each public agency specified in this subdivision shall adopt an internal protocol over communications regarding the discharge of oil and file the internal protocol with the Office of Emergency Services.

(c) The 24-hour emergency telephone number of the Office of Emergency Services shall be posted at every terminal, at the area of control of every marine facility, and on the bridge of every tank ship in marine waters.

(d) This section does not apply to discharges, or potential discharges, of less than one barrel (42 gallons) of oil unless a more restrictive reporting standard is adopted in the state oil spill contingency plan prepared pursuant to Section 8574.1.

(e) Except as otherwise provided in this section and Section 8589.7, a notification made pursuant to this section shall satisfy any immediate notification requirement contained in any permit issued by a permitting agency.

SEC. 17. Section 8670.27 of the Government Code is amended to read:

8670.27. (a) (1) All potentially responsible parties for discharged oil and all of their agents and employees and all state and local agencies shall carry out response and cleanup operations in accordance with the applicable contingency plan, unless directed otherwise by the administrator or the Coast Guard.

(2) Except as provided in subdivision (b), the responsible party, potentially responsible parties, their agents and employees, the operators of all vessels docked at a marine facility that is the source of a discharge, and all state and local agencies shall carry out spill response consistent with the state oil spill contingency plan or other applicable federal, state, or local spill response plans, and owners and operators shall carry out spill response consistent with their applicable response contingency plans, unless directed otherwise by the administrator or the Coast Guard.

(b) If a responsible party or potentially responsible party reasonably, and in good faith, believes that the directions or orders given by the administrator pursuant to subdivision (a) will substantially endanger the public safety or the environment, the party may refuse to act in compliance with the orders or directions of the administrator. The responsible party or potentially responsible party shall state, at the time of the refusal, the reasons why the party refuses to follow the orders or directions of the administrator. The responsible party or potentially responsible party shall give the administrator written notice of the reasons for the refusal within 48 hours of refusing to follow the orders or directions of the administrator. In any civil or criminal proceeding commenced pursuant to this section, the burden of proof shall be on the responsible party or potentially responsible party to demonstrate, by clear and convincing evidence, why the refusal to follow the orders or directions of the administrator was justified under the circumstances.

SEC. 18. Section 8670.28 of the Government Code is amended to read:

8670.28. (a) The administrator, taking into consideration the marine facility or vessel contingency plan requirements of the national and state contingency plans, the State Lands Commission, the State Fire Marshal, and the California Coastal Commission shall adopt and implement regulations and guidelines governing the adequacy of oil spill contingency plans to be prepared and implemented under this article. All regulations and guidelines shall be developed in consultation with the State Interagency Oil Spill Committee, and the Oil Spill Technical Advisory Committee, and shall be consistent with the state oil spill contingency plan and not in conflict with the National Contingency Plan. The administrator shall hold a public hearing on the regulations. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources. The regulations and guidelines shall permit the development, application, and use of an oil spill contingency plan for similar vessels, pipelines, terminals, and facilities within a single company or organization, and across companies and organizations. The regulations and guidelines shall, at a minimum, ensure all of the following:

(1) All areas of the marine waters of the state are at all times protected by prevention, response, containment, and cleanup equipment and operations. For the purposes of this section, ''marine waters'' includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

(2) Standards set for response, containment, and cleanup equipment and operations are maintained and regularly improved to protect the resources of the state.

(3) All appropriate personnel employed by operators required to have a contingency plan receive training in oil spill response and cleanup equipment usage and operations.

(4) Each oil spill contingency plan provides for appropriate financial or contractual arrangements for all necessary equipment and services, for the response, containment, and cleanup of a reasonable worst case oil spill scenario for each part of the coast the plan addresses.

(5) Each oil spill contingency plan demonstrates that all protection measures are being taken to reduce the possibility of an oil spill occurring as a result of the operation of the marine facility or vessel. The protection measures shall include, but not be limited to, response to disabled vessels and an identification of those measures taken to comply with requirements of Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(6) Each oil spill contingency plan identifies the types of equipment that can be used, the location of the equipment, and the time taken to deliver the equipment.

(7) Each marine facility conducts a hazard and operability study to identify the hazards associated with the operation of the facility, including the use of the facility by vessels, due to operating error, equipment failure, and external events. For the hazards identified in the hazard and operability studies, the facility shall conduct an offsite consequence analysis which, for the most likely hazards, assumes pessimistic water and air dispersion and other adverse environmental conditions.

(8) Each oil spill contingency plan contains a list of contacts to call in the event of a drill, threatened discharge of oil, or discharge of oil.

(9) Each oil spill contingency plan identifies the measures to be taken to protect the recreational and environmentally sensitive areas that would be threatened by a reasonable worst case oil spill scenario.

(10) Standards for determining a reasonable worst case oil spill.

(11) Each oil spill contingency plan includes a timetable for implementing the plan.

(12) Each oil spill contingency plan specifies an agent for service of process. The agent shall be located in this state.

(b) The regulations and guidelines adopted pursuant to this section shall also include provisions to provide public review and comment on submitted oil spill contingency plans prior to approval.

(c) The regulations adopted pursuant to this section shall specifically address the types of equipment that will be necessary, the maximum time that will be allowed for deployment, the maximum distance to cooperating response entities, the amounts of dispersant, and the maximum time required for application, should the use of dispersants be approved. Upon a determination by the administrator that booming is appropriate at the site and necessary to provide best achievable protection, the regulations shall require that vessels engaged in lightering operations be boomed prior to the commencement of operations.

(d) The administrator shall adopt regulations and guidelines for oil spill contingency plans with regard to mobile transfer units, small marine fueling facilities, and vessels carrying oil as secondary cargo that acknowledge the reduced risk of damage from oil spills from those units, facilities, and vessels while maintaining the best achievable protection for the public health and safety and the environment.

(e) The regulations adopted pursuant to subdivision (d) shall be exempt from review by the Office of Administrative Law. Subsequent amendments and changes to the regulations shall not be exempt from Office of Administrative Law review.

SEC. 19. Section 8670.29 of the Government Code is repealed.

SEC. 20. Section 8670.29 is added to the Government Code, to read:

8670.29. (a) In accordance with the rules, regulations, and policies established by the administrator pursuant to Section 8670.28, every owner or operator of a marine facility, small marine fueling facility or mobile transfer unit, prior to operating in the marine waters of the state or where an oil spill could impact marine waters; and every owner or operator of a tank vessel, nontank vessel or vessel carrying oil as secondary cargo before operating in the marine waters of the state, shall prepare and implement an oil spill contingency plan that has been submitted to, and approved by, the administrator pursuant to Section 8670.31. Each oil spill contingency plan shall ensure the undertaking of prompt and adequate response and removal action in case of an oil spill, shall be consistent with the state oil spill contingency plan, and shall not conflict with the National Contingency Plan.

(b) Each oil spill contingency plan shall, at a minimum, meet all of the following requirements:

(1) Be a written document, reviewed for feasibility and executability, and signed by the owner or operator, or their designee.

(2) Provide for the use of an incident command system to be used during a spill.

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

(4) Describe the communication plans to be used during a spill.

(5) Describe the strategies for the protection of environmentally sensitive areas.

(6) Identify at least one rated OSRO for each rating level established pursuant to Section 8670.30. Each identified rated OSRO shall be directly responsible by contract, agreement, or other approved means to provide oil spill response activities pursuant to the oil spill contingency plan. A rated OSRO may provide oil spill response activities individually, or in combination with another rated OSRO, for a particular owner or operator.

(7) Identify a qualified individual.

(8) Provide the name, address, telephone, and facsimile numbers for an agent for service of process, located within the state and designated to receive legal documents on behalf of the owner or operator.

(c) An oil spill contingency plan for a vessel shall also include, but is not limited to, all of the following requirements:

(1) Each plan shall be submitted to the administrator at least seven days prior to the vessel entering waters of the state.

(2) Each plan shall provide evidence of compliance with the International Safety Management Code, established by the International Maritime Organization, as applicable.

(3) If the oil spill contingency plan is for a tank vessel, the plan shall include both of the following:

(A) The plan shall specify oil and petroleum cargo capacity.

(B) The plan shall specify the types of oil and petroleum cargo carried.

(4) If the oil spill contingency plan is for a nontank vessel, the plan shall include both of the following:

(A) The plan shall specify the type and total amount of fuel carried.

(B) The plan shall specify the capacity of the largest fuel tank.

(d) An owner or operator may provide evidence of a contract with the Pacific Merchant Shipping Association, a nonprofit corporation, or other nonprofit maritime association, to provide a statewide oil spill response plan consistent with the requirements of this section, pursuant to its applicable fee structure. A nontank vessel owner or operator shall submit any information, or address any plan element that is required pursuant to this article but not addressed by a statewide spill response plan.

(e) An oil spill contingency plan for a marine facility shall also include, but is not limited to, all of the following provisions:

(1) Provisions for site security and control.

(2) Provisions for emergency medical treatment and first aid.

(3) Provisions for safety training, as required by state and federal safety laws for all personnel likely to be engaged in oil spill response.

(4) Provisions detailing site layout and locations of environmentally sensitive areas requiring special protection.

(5) Provisions for vessels that are in the operational control of the facility for loading and unloading.

(6) Provide training and drills at least annually on all of the elements of the plan.

(f) The oil spill contingency plan shall be available to response personnel and to relevant state and federal agencies for inspection and review.

(g) The oil spill contingency plan shall be reviewed periodically and updated as necessary. All updates shall be submitted to the administrator pursuant to this article.

(h) In addition to the regulations adopted pursuant to Section 8670.28, the administrator shall adopt regulations and guidelines to implement this section. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources. The administrator may establish additional oil spill contingency plan requirements, including, but not limited to, requirements based on the different geographic regions of the state. All regulations and guidelines shall be developed in consultation with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee.

(i) For the purposes of this section, ''marine waters'' includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

SEC. 21. Section 8670.30 of the Government Code is repealed.

SEC. 22. Section 8670.30 is added to the Government Code, to read:

8670.30. (a) An oil spill response organization may apply to the administrator for a rating of that OSRO's response capabilities. The administrator shall establish rating levels for classifying OSROs pursuant to subdivision (b).

(b) Upon receiving a completed application for rating, the administrator shall review the application and rate the OSRO based on the OSRO's satisfactory compliance with criteria established by the administrator, which shall include, but is not limited to, all of the following elements:

(1) The geographic region or regions of the state where the OSRO intends to operate.

(2) Timeframes for having response resources on-scene and deployed.

(3) The type of equipment that the OSRO will use and the location of the stored equipment.

(4) The volume of oil that the OSRO is capable of recovering and containing.

(c) The administrator shall not issue a rating until the applicant OSRO completes an unannounced drill. The administrator may call a drill for every distinct geographic area in which the OSRO requests a rating. The drill shall test the resources and response capabilities of the OSRO, including, but not limited to, on water containment and recovery, environmentally sensitive habitat protection, and storage. If an OSRO fails to successfully complete a drill, the administrator shall not issue the requested rating, but the administrator may rate the OSRO at a rating lesser than the rating sought with the application. If an OSRO is denied a requested rating, the OSRO may reapply for rating.

(d) A rating issued pursuant to this section shall be valid for three years unless modified, suspended, or revoked. The administrator shall review the rating of each rated OSRO at least once every three years. The administrator shall not renew a rating unless the OSRO meets criteria established by the administrator, including, at a minimum, that the rated OSRO periodically tests and drills itself, including testing protection of environmentally sensitive sites, during the three-year period.

(e) The administrator may require a rated OSRO to demonstrate that the rated OSRO can deploy the response resources required to meet the applicable provisions of an oil spill contingency plan in which the OSRO is listed. These demonstrations may be achieved through inspections, announced and unannounced drills, or by any other means.

(f) (1) Except as provided in paragraph (6), each rated OSRO shall satisfactorily complete at least one unannounced drill every three years after receiving its rating.

(2) The administrator may modify, suspend, or revoke an OSRO's rating if a rated OSRO fails to satisfactorily complete a drill.

(3) The administrator may require the satisfactory completion of one unannounced drill of each rated OSRO prior to being granted a modified rating, or for renewal, or prior to reinstatement of a revoked or suspended rating.

(4) A drill for the protection of environmentally sensitive areas shall conform as close as possible to the response that would occur during a spill but sensitive sites shall not be damaged during the drill.

(5) The response resources to be deployed by a rated OSRO within the first six hours of a spill or drill shall be dedicated response resources or be owned and controlled by a rated OSRO that are sufficient to meet the spill response planning requirements of the OSRO's client owner or operator. This requirement does not preclude a rated OSRO from bringing in additional response resources. The administrator may, by regulation, permit a lesser requirement for dedicated or OSRO owned and controlled response resources for shoreline protection.

(6) The administrator may determine that actual spill response performance may be substituted in lieu of a drill.

(7) The administrator shall issue a written report evaluating the performance of the OSRO after every unannounced drill called by the administrator.

(8) The administrator shall determine whether an unannounced drill called upon an OSRO by a federal agency qualifies as an unannounced drill for the purposes of this subdivision.

(g) Each rated OSRO shall provide reasonable notice to the administrator about each future drill, and the administrator, or his or her designee, may attend the drill.

(h) The costs incurred by an OSRO to comply with this section and the regulations adopted pursuant to this section, including drills called by the administrator, shall be the responsibility of the OSRO. All local, state, and federal agency costs incurred in conjunction with participation in a drill shall be borne by each respective agency.

(i) (1) A rating awarded pursuant to this section is personal and applies only to the OSRO that receives that rating and the rating is not transferable, assignable, or assumable. A rating does not constitute a possessory interest in real or personal property.

(2) If there is a change in ownership or control of the OSRO, the rating of that OSRO is null and void and the OSRO shall file a new application for a rating pursuant to this section.

(3) For purposes of this subdivision, a ''change in ownership or control'' includes, but is not limited to, a change in corporate status, or a transfer of ownership that changes the majority control of voting within the entity.

(j) The administrator may charge a reasonable fee to process an application for, or renewal of, a rating.

(k) The administrator shall adopt regulations to implement this section as appropriate. At a minimum, the regulations shall appropriately address all of the following:

(1) Criteria for successful completion of a drill.

(2) The amount and type of response resources that are required to be available to respond to a particular volume of spilled oil during specific timeframes within a particular region.

(3) Regional requirements.

(4) Training.

(5) The process for applying for a rating, and for suspension, revocation, appeal, or other modification of a rating.

(6) Ownership and employment of response resources.

(7) Conditions for canceling a drill due to hazardous or other operational circumstances.

(*l*) Any letter of approval issued from the administrator before January 1, 2002, that rates an OSRO shall be deemed to meet the requirements of this section for three years from the date of the letter's issuance or until January 1, 2003, whichever date occurs later.

SEC. 23. Section 8670.30.5 of the Government Code is amended to read:

8670.30.5. (a) The administrator may review each oil spill contingency plan that has been approved pursuant to Section 8670.29 to determine whether it complies with Sections 8670.28 and 8670.29.

(b) If the administrator finds the approved oil spill contingency plan is deficient, the plan shall be returned to the operator with written reasons why the approved plan was found inadequate and, if practicable, suggested modifications or alternatives. The operator shall submit a new or modified plan within 90 days that responds to the deficiencies identified by the administrator.

SEC. 24. Section 8670.31 of the Government Code is amended to read:

8670.31. (a) Each oil spill contingency plan required under this article shall be submitted to the administrator within 90 days after the effective date of the rules, regulations, and policies adopted pursuant to Sections 8670.28 and 8670.29 or before a tank vessel, nontank vessel, or vessel carrying oil as secondary cargo operates in the marine waters of the state or before a marine facility, small marine fueling facility, or mobile transfer unit, operates in the marine waters of the state or where

an oil spill therefrom could impact marine waters, if those operations commence after the effective date of those rules, regulations, or policies.

(b) The administrator shall review each submitted contingency plan to determine whether it complies with the administrator's rules, policies, and regulations adopted pursuant to Section 8670.28 and 8670.29.

(c) Each contingency plan submitted shall be approved or disapproved within 180 days after receipt by the administrator. The administrator may approve or disapprove portions of a plan. A plan is not deemed approved until all portions are approved pursuant to this section. The disapproved portion shall be subject to the procedures contained in subdivision (d).

(d) If the administrator finds the submitted contingency plan is inadequate under the rules, policies, and regulations of the administrator, the plan shall be returned to the submitter with written reasons why the plan was found inadequate and, if practicable, suggested modifications or alternatives, if appropriate. The submitter shall submit a new or modified plan within 90 days after the earlier plan was returned, responding to the findings and incorporating any suggested modifications. The resubmittal shall be treated as a new submittal and processed according to the provisions of this section, except that the resubmitted plan shall be deemed approved unless the administrator acts pursuant to subdivision (c). Failure to gain approval after the second submission may be determined by the administrator to be a violation of this chapter.

(e) The administrator may make inspections and require drills of any oil spill contingency plan that is submitted.

(f) After the plan has been approved, it shall be resubmitted every five years thereafter. The administrator may require earlier or more frequent resubmission, if warranted. Circumstances that would require an earlier resubmission include, but are not limited to, changes in regulations, new oil spill response technologies, deficiencies identified in the evaluation conducted pursuant to Section 8670.19, or a need for a different oil spill response because of increased need to protect endangered species habitat. The administrator may deny approval of the resubmitted plan if it is no longer considered adequate according to the adopted rules, regulations, and policies of the administrator at the time of resubmission.

(g) (1) Each operator of a tank vessel, vessel carrying oil as a secondary cargo, or marine facility who is required to file an oil spill response plan or update pursuant to provisions of federal law regulating marine oil spill response plans shall, for informational purposes only, submit a copy of that plan or update to the administrator at the time that it is approved by the relevant federal agency.

(2) A tank vessel, vessel carrying oil as a secondary cargo, or marine facility operator is not required to submit a copy of the response plan or update specified in paragraph (1) to the administrator if either the vessel or facility is exempt from having to file a response plan with the state, or if the content of the plan submitted by the operator pursuant to Section 8670.29 is substantially the same as the federal response plan or update.

SEC. 25. Section 8670.32 of the Government Code, as amended by Section 1 of Chapter 721 of the Statutes of 2000, is repealed.

SEC. 26. Section 8670.32 of the Government Code, as added by Section 2 of Chapter 721 of the Statutes of 2000, is repealed.

SEC. 27. Section 8670.33 of the Government Code is amended to read:

8670.33. (a) If the operator of a tank ship or tank barge for which a contingency plan has not been approved desires to have the tank ship or tank barge enter marine waters of the state, the administrator may give approval by telephone or facsimile machine for the entry of the tank ship or tank barge into marine waters under an approved contingency plan applicable to a terminal or tank ship, if all of the following are met:

(1) The terminal or tank ship is the destination of the tank ship or tank barge.

(2) The operator of the terminal or the tank ship provides the administrator advance written assurance that the operator assumes all responsibility for the operations of the tank ship or tank barge while it is in marine waters traveling to or from the terminal. The assurance may be delivered by hand or by mail or may be sent by facsimile machine, followed by delivery of the original.

(3) The approved terminal or tank ship contingency plan includes all conditions the administrator requires for the operations of tank ship or tank barges traveling to and from the terminal.

(4) The tank ship or tank barge and its operations meet all requirements of the contingency plan for the tank ship or terminal that is the destination of the tanker or tank ship.

(5) The tank ship or tank barge without an approved contingency plan has not entered marine waters more than once in the 12-month period preceding the request made under this section.

(b) At all times that a tank ship or tank barge is in marine waters pursuant to subdivision (a), its operators and all their agents and employees shall operate the vessel in accordance with the applicable operations manual or, if there is an oil spill, in accordance with the directions of the administrator and the applicable contingency plan.

SEC. 28. Section 8670.34 of the Government Code is amended to read:

8670.34. This article shall not apply to any tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo that enters marine

waters of the state because of imminent danger to the lives of crew members or if entering marine waters of the state will substantially aid in preventing an oil spill or other harm to public safety or the environment, if the operators of the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo comply with all of the following:

(a) The operators or crew of the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo complies at all times with all orders and directions given by the administrator, or his or her designee, while the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo is in marine waters of the state, unless the orders or directions are contradicted by orders or directions of the Coast Guard.

(b) Except for fuel, oil may be transferred to or from the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo while it is in marine waters of the state only if permission is obtained for the transfer of oil and one of the following conditions is met:

(1) The transfer is necessary for the safety of the crew.

(2) The transfer is necessary to prevent harm to public safety or the environment.

(3) An oil spill contingency plan is approved or made applicable to the tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo, under subdivision (c).

(c) The tank vessel, nontank vessel, or vessel carrying oil as a secondary cargo shall leave the marine waters of the state as soon as it may do so without imminent risk of harm to the crew, public safety, or the environment, unless an oil spill contingency plan is approved or made applicable to it under this article.

SEC. 29. Section 8670.36.1 of the Government Code is amended to read:

8670.36.1. (a) To reduce the damages and costs from spills, the administrator shall develop an outreach program to provide assistance to the operators of small craft refueling docks.

(b) The program shall include both of the following:

(1) Voluntary inspections by the administrator. The administrator shall prepare, and maintain on file, a written report recommending how any risk of a spill identified in those inspections may be reduced and how those recommendations could be implemented.

(2) An education and outreach program to inform small craft refueling dock operators and the operators of the vessels they serve of the obligations and potential liabilities from a spill. For the purpose of this section, ''vessel'' has the same meaning as in Section 21 of the Harbors and Navigation Code.

(c) To ensure effective implementation of the program, each small craft refueling dock shall register with the administrator by July 1, 1993.

(d) The administrator may require information needed to evaluate whether a facility is a small craft refueling dock as defined in Section 8670.3. The administrator may also require any pertinent information regarding the oil spill risk of a small craft refueling dock. This information may include, but shall not be limited to, the following:

(1) The type of oil handled.

(2) The size of storage tanks.

(3) The name and telephone number of the small craft refueling dock operator.

(4) The location and size of the small craft refueling dock.

(e) The administrator may develop regulations to implement this section.

SEC. 30. Section 8670.37 of the Government Code is amended to read:

8670.37. (a) The administrator, with the assistance of the State Lands Commission, the California Coastal Commission, and the executive director of the San Francisco Bay Conservation and Development Commission, shall carry out studies with regard to improvements to contingency planning and oil spill response equipment and operations.

(b) To the greatest extent possible, these studies shall be coordinated with studies being done by the federal government, and other appropriate state and international entities, and duplication with the efforts of other entities shall be minimized.

(c) The administrator, the State Lands Commission, the California Coastal Commission, and the Executive Director of the San Francisco Bay Conservation and Development Commission, may be reimbursed for all costs incurred in carrying out the studies under this section from the Oil Spill Prevention and Administration Fund.

SEC. 31. Section 8670.37.5 of the Government Code is amended to read:

8670.37.5. (a) The administrator shall establish a network of rescue and rehabilitation stations for sea birds, sea otters, and other marine mammals. These facilities shall be established and maintained in a state of preparedness to provide the best achievable treatment for marine mammals and birds affected by an oil spill in marine waters. The administrator shall consider all feasible management alternatives for operation of the network.

(b) The first rescue and rehabilitation station established pursuant to this section shall be located within the sea otter range on the central coast. The administrator shall establish regional oiled wildlife rescue and rehabilitation facilities in the Los Angeles Harbor area, the San Francisco Bay area, the San Diego area, the Monterey Bay area, the Humboldt County area, and the Santa Barbara area, and may establish

those facilities in other coastal areas of the state as the administrator determines to be necessary. One or more of the oiled wildlife rescue and rehabilitation stations shall be open to the public for educational purposes and shall be available for marine wildlife health research. Wherever possible in the establishment of these facilities, the administrator shall improve existing authorized marine mammal rehabilitation facilities and may expand or take advantage of existing educational or scientific programs and institutions for oiled wildlife rehabilitation purposes. Expenditures shall be reviewed by the agencies and organizations specified in subdivision (c).

(c) The administrator shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, the California Coastal Commission, the Executive Director of the San Francisco Bay Conservation and Development Commission, the Marine Mammal Center, and the International Bird Rescue Center in the design, planning, construction, and operation of the rescue and rehabilitation stations. All proposals for the rescue and rehabilitation stations shall be presented before a public hearing prior to the construction and operation of any rehabilitation station, and, upon completion of the coastal protection element of the state oil spill contingency plan, shall be consistent with the coastal protection element.

(d) The administrator may enter into agreements with nonprofit organizations to establish and equip wildlife rescue and rehabilitation stations and to ensure that they are operated in a professional manner in keeping with the pertinent guidance documents issued by the Office of Oil Spill Prevention and Response in the Department of Fish and Game. The implementation of the agreement shall not constitute a state public works project. The agreement shall be deemed a contract for wildlife rehabilitation as authorized by Section 8670.62.

(e) (1) Five hundred thousand dollars ($500,000) of federal escrow funds received by the state pursuant to Section 8(g) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. Sec. 1337(g)), shall, upon approval in the 1991–92 Budget Act, be appropriated or allocated for appropriation, as the case may be, from the Federal Trust Fund, each year for three years for the purposes described in subdivision (a).

(2) Additional funding shall be provided for the purposes described in subdivision (a) from four years of interest earned on the funds deposited in the Oil Spill Response Trust Fund as authorized in subdivision (*l*) of Section 8670.48 or through the Budget Act process upon the request by the administrator.

(f) In the event of a spill, the responsible party may request that the administrator perform the rescue and rehabilitation of oiled wildlife required of the responsible party pursuant to this chapter if the

responsible party and the administrator enter into an agreement for the reimbursement of the administrator's costs incurred in taking the requested action. If the administrator performs the rescue and rehabilitation of oiled wildlife, the administrator shall primarily utilize the network of rescue and rehabilitation stations established pursuant to subdivision (a), unless more immediate care is required. Any of those activities conducted pursuant to this section or Section 8670.56.5 or 8670.61.5 shall be performed under the direction of the administrator. Nothing in this subdivision shall be construed as removing the responsible party from liability for the costs of, nor the responsibility for, the rescue and rehabilitation of oiled wildlife, as established by this chapter. Nothing in this subdivision shall be construed as prohibiting an owner or operator from retaining, in a contingency plan prepared pursuant to this article, wildlife rescue and rehabilitation services different from the rescue and rehabilitation stations established pursuant to this section.

(g) (1) The administrator shall appoint a rescue and rehabilitation advisory board to advise the administrator regarding operation of the network of rescue and rehabilitation stations established pursuant to subdivision (a), including the economic operation and maintenance of the network. For the purpose of assisting the administrator in determining what constitutes the best achievable treatment for oiled wildlife, the advisory board shall provide recommendations to the administrator on the care achieved by current standard treatment methods, new or alternative treatment methods, the costs of treatment methods, and any other information which the advisory board believes that the administrator might find useful in making that determination. The administrator shall consult the advisory board in preparing the administrator's submission to the Legislature pursuant to subparagraph (A) of paragraph (2) of subdivision (*l*) of Section 8670.48. The administrator shall present the recommendations of the advisory board to the Oil Spill Technical Advisory Committee created pursuant to Article 8 (commencing with Section 8670.54), upon the request of the committee.

(2) The advisory board shall consist of a balance between representatives of the oil industry, wildlife rehabilitation organizations, and academia. One academic representative shall be from a veterinary school within this state. The United States Fish and Wildlife Service and the National Marine Fisheries Service shall be requested to participate as ex-officio members.

(3) (A) The Legislature hereby finds and declares that since the administrator may rely on the expertise provided by the volunteer members of the advisory board and may be guided by their recommendations in making decisions that relate to operation of the

network of rescue and rehabilitation stations, those members should be entitled to the same immunity from liability that is provided other public employees.

(B) Members of the advisory board, while performing functions within the scope of advisory board duties, shall be entitled to the same rights and immunities granted public employees by Article 3 (commencing with Section 820) of Chapter 1 of Part 2 of Division 3.6 of Title 1. Those rights and immunities are deemed to have attached, and shall attach, as of the date of appointment of the member to the advisory board.

SEC. 32. Section 8670.37.51 of the Government Code is amended to read:

8670.37.51. (a) No tank vessel or vessel carrying oil as a secondary cargo may be used to transport oil across marine waters of the state unless the operator has obtained a certificate of financial responsibility issued by the administrator for that vessel or for the owner of all of the oil contained in and to be transferred to or from that vessel.

(b) No operator of a marine terminal within the state may transfer oil to or from a tank vessel or vessel carrying oil as a secondary cargo unless the operator of the marine terminal has received a copy of a certificate of financial responsibility issued by the administrator for the operator of that vessel or for all of the oil contained in and to be transferred to or from that vessel.

(c) No operator of a marine terminal within the state may transfer oil to or from any vessel that is or is intended to be used for transporting oil as cargo to or from a second vessel unless the operator of the marine terminal has first received a copy of a certificate of financial responsibility issued by the administrator for the person responsible for both the first and second vessels or all of the oil contained in both vessels, as well as all the oil to be transferred to or from both vessels.

(d) No person may operate a marine facility unless the owner or operator of the marine facility has first obtained a certificate of financial responsibility from the administrator for the marine facility.

(e) No tank vessel or vessel carrying oil as a secondary cargo may be used to transport oil across marine waters of the state unless, at least 24 hours prior to the transport, the administrator has received both of the following:

(1) A copy of a certificate applicable to that vessel or to all of the oil in that vessel at all times during transport.

(2) A copy of a written statement by the holder of the applicable certificate authorizing its application to the vessel.

SEC. 33. Section 8670.37.53 of the Government Code is amended to read:

8670.37.53. (a) To receive a certificate of financial responsibility for a tank vessel or for all of the oil contained within such a vessel, the applicant shall demonstrate to the satisfaction of the administrator the financial ability to pay at least one billion dollars ($1,000,000,000) for any damages that may arise during the term of the certificate.

(b) The administrator may establish a lower standard of financial responsibility for small tank barges, vessels carrying oil as a secondary cargo, and small marine fueling facilities. The standard shall be based on the quantity of oil that can be carried or stored and the risk of spill into marine waters. The administrator shall not set a standard that is less than the expected costs from a reasonable worst case oil spill into marine waters.

(c) (1) To receive a certificate of financial responsibility for a marine facility, the applicant shall demonstrate to the satisfaction of the administrator the financial ability to pay for any damages that might arise during a reasonable worst case oil spill into marine waters that results from the operations of the marine facility. The administrator shall consider criteria including, but not necessarily limited to, the amount of oil that could be spilled into marine waters from the facility, the cost of cleaning up spilled oil, the frequency of operations at the facility, and the damages that could result from a spill.

(2) The administrator may issue a certificate for a marine facility upon a lesser showing of financial resources for a period of not longer than three years if the administrator finds all of the following:

(A) The marine facility was operating on January 1, 1991.

(B) Continued operation is necessary to finance abandonment of the marine facility.

(C) The financial resources the operator is able to demonstrate are reasonably sufficient to cover the damages from foreseeable spills from the facility.

SEC. 34. Section 8670.37.55 of the Government Code is amended to read:

8670.37.55. (a) An owner or operator of more than one tank vessel, vessel carrying oil as a secondary cargo, nontank vessel, or marine facility shall only be required to obtain one certificate of financial responsibility for all of those vessels and marine facilities owned or operated.

(b) If a person holds a certificate for more than one tank vessel, vessel carrying oil as a secondary cargo, nontank vessel, or marine facility and a spill or spills occurs from one or more of those vessels or marine facilities for which the owner or operator may be liable for damages in an amount exceeding 5 percent of the financial resources reflected by the certificate, as determined by the administrator, the certificate shall immediately be considered inapplicable to any vessel or marine facility

not associated with the spill. In that event, the owner or operator shall demonstrate to the satisfaction of the administrator the amount of financial ability required pursuant to this article, as well as the financial ability to pay all damages that arise or have arisen from the spill or spills which have occurred.

SEC. 35. Section 8670.37.58 is added to the Government Code, to read:

8670.37.58. (a) A nontank vessel, required to have a contingency plan pursuant to this chapter, shall not enter marine waters of the state unless the nontank vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars ($300,000,000) to cover damages caused by a spill, and the owner or operator of the nontank vessel has obtained a certificate of financial responsibility from the administrator for the nontank vessel. The administrator may charge a nontank vessel owner or operator a reasonable fee to reimburse costs to verify and process an application for evidence of financial responsibility.

(b) Notwithstanding subdivision (a), the administrator may establish a lower standard of financial responsibility for a nontank vessel that has a carrying capacity of 6,500 barrels of oil or less, or, if the nontank vessel is owned and operated by California or a federal agency, a carrying capacity of 7,500 barrels of oil or less. The standard shall be based upon the quantity of oil that can be carried by the nontank vessel and the risk of an oil spill into marine waters. The administrator shall not set a standard that is less than the expected cleanup costs and damages from an oil spill into marine waters.

(c) The administrator may adopt regulations to implement this section.

(d) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 36. Section 8670.37.58 is added to the Government Code, to read:

8670.37.58. (a) A nontank vessel, required to have a contingency plan pursuant to this chapter, shall not enter marine waters of the state unless the nontank vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars ($300,000,000) to cover damages caused by a spill, and the owner or operator of the nontank vessel has obtained a certificate of financial responsibility from the administrator for the nontank vessel. The administrator may charge a nontank vessel owner or operator a

reasonable fee to reimburse costs to verify and process an application for evidence of financial responsibility.

(b) The administrator may adopt regulations to implement this section.

(c) This section shall become operative on January 1, 2003.

SEC. 37. Section 8670.55 of the Government Code is amended to read:

8670.55. (a) The committee shall provide recommendations to the administrator, the State Lands Commission, the California Coastal Commission, the San Francisco Bay Conservation and Development Commission, and the State Interagency Oil Spill Committee, on any provision of this chapter including the promulgation of all rules, regulations, guidelines, and policies.

(b) The committee may, at its own discretion, study, comment on, or evaluate, any aspect of oil spill prevention and response in the state. To the greatest extent possible, these studies shall be coordinated with studies being done by the federal government, the administrator, the State Lands Commission, the State Water Resources Control Board, and other appropriate state and international entities. Duplication with the efforts of other entities shall be minimized.

(c) The committee may attend any drills called pursuant to Section 8601.10 or any oil spills, if practicable.

(d) The committee shall report annually to the Governor and the Legislature on their evaluation of oil spill response and preparedness programs within the state annually and may prepare and send any additional reports they determine to be appropriate to the Governor and the Legislature.

SEC. 38. Section 8670.56.5 of the Government Code is amended to read:

8670.56.5. (a) Any responsible party, as defined in Section 8670.3, shall be absolutely liable without regard to fault for any damages incurred by any injured party which arise out of, or are caused by, the discharge or leaking of oil into or onto marine waters.

(b) A responsible person is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the state or a local government, caused solely by any act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages caused solely by the negligence or intentional malfeasance of that injured party.

(3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant.

(4) Natural seepage not caused by a responsible party.

(5) Discharge or leaking of oil or natural gas from a private pleasure boat or vessel.

(6) Damages that arise out of, or are caused by, a discharge that is authorized by a state or federal permit.

(c) The defenses provided in subdivision (b) shall not be available to a responsible person who fails to comply with Sections 8670.25, 8670.25.5, 8670.27, and 8670.62.

(d) Upon motion and sufficient showing by a party deemed to be responsible under this section, the court shall join to the action any other party who may be responsible under this section.

(e) In determining whether a party is a responsible party under this section, the court shall consider the results of any chemical or other scientific tests conducted to determine whether oil or other substances produced, discharged, or controlled by the defendant matches the oil or other substance which caused the damage to the injured party. The defendant shall have the burden of producing the results of tests of samples of the substance which caused the injury and of substances for which the defendant is responsible, unless it is not possible to conduct the tests because of unavailability of samples to test or because the substance is not one for which reliable tests have been developed. At the request of any party, any other party shall provide samples of oil or other substances within its possession or control for testing.

(f) The court may award reasonable costs of the suit, attorneys' fees, and the costs of any necessary expert witnesses to any prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any prevailing defendant if the court finds that the plaintiff commenced or prosecuted the suit under this section in bad faith or solely for purposes of harassing the defendant.

(g) This section does not prohibit any person from bringing an action for damages caused by oil or by exploration, under any other provision or principle of law, including, but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party for any loss or injury for which the party is or has been awarded damages under any other provision or principle of law. Subdivision (b) does not create any defense not otherwise available regarding any action brought under any other provision or principle of law, including, but not limited to, common law.

(h) Damages for which responsible parties are liable under this section include the following:

(1) All costs of response, containment, cleanup, removal, and treatment, including, but not limited to, monitoring and administration

costs incurred pursuant to the state oil spill contingency plan or actions taken pursuant to directions by the administrator.

(2) Injury to, or economic losses resulting from destruction of or injury to, real or personal property, which shall be recoverable by any claimant who has an ownership or leasehold interest in property.

(3) Injury to, destruction of or loss of, natural resources, including, but not limited to, the reasonable costs of rehabilitating wildlife, habitat, and other resources and the reasonable costs of assessing that injury, destruction, or loss, in any action brought by the state, a county, city, or district. Damages for the loss of natural resources may be determined by any reasonable method, including, but not limited to, determination according to the costs of restoring the lost resource.

(4) Loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources that have been injured, destroyed, or lost.

(5) Loss of taxes, royalties, rents, or net profit shares caused by the injury, destruction, loss, or impairment of use of real property, personal property, or natural resources.

(6) Loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant who derives at least 25 percent of his or her earnings from the activities which utilize the property or natural resources, or, if those activities are seasonal in nature, 25 percent of his or her earnings during the applicable season.

(7) Loss of use and enjoyment of natural resources, public beaches, and other public resources or facilities, in any action brought by the state, a county, city, or district.

(i) Except as provided in Section 1431.2 of the Civil Code, liability under this section shall be joint and several. However, this section does not bar a cause of action that a responsible party has or would have, by reason of subrogation or otherwise, against any person.

(j) This section does not apply to claims for damages for personal injury or wrongful death, and does not limit the right of any person to bring an action for personal injury or wrongful death under any provision or principle of law.

(k) Any payments made by a responsible party to cover liabilities arising from a discharge of oil, whether under this division or any other provision of federal, state, or local law, shall not be charged against any royalties, rents, or net profits owed to the United States, the state, or any other public entity.

(*l*) Any action which a private or public individual or entity may have against a responsible party under this section may be brought directly by the individual or entity or by the state on behalf of the individual or entity. However, the state shall not pursue any action on behalf of a

private individual or entity which requests the state not to pursue that action.

(m) For the purposes of this section, ''vessels'' means vessels as defined in Section 21 of the Harbors and Navigation Code.

SEC. 39. Section 8670.56.6 of the Government Code is amended to read:

8670.56.6. (a) (1) Except as provided in subdivisions (b) and (d), and subject to subdivision (c), no person, including, but not limited to, an oil spill cooperative, its agents, subcontractors, or employees, shall be liable under this chapter or the laws of the state to any person for costs, damages, or other claims or expenses as a result of actions taken or omitted in good faith in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan, the state oil spill contingency plan, or at the direction of the administrator, onsite coordinator, or the Coast Guard in response to a spill or threatened spill of oil.

(2) The qualified immunity under this section shall not apply to any oil spill response action that is inconsistent with the following:

(A) The directions of the unified command, consisting of at least the Coast Guard and the administrator.

(B) In the absence of a unified command, the directions of the administrator pursuant to Section 8670.27.

(C) In the absence of directions pursuant to subparagraph (A) or (B), applicable oil spill contingency plans implemented under this division.

(3) Nothing in this section shall, in any manner or respect, affect or impair any cause of action against or any liability of any person or persons responsible for the spill, for the discharged oil, or for the vessel, terminal, pipeline, or facility from which the oil was discharged. The responsible person or persons shall remain liable for any and all damages arising from the discharge, including damages arising from improperly carried out response efforts, as otherwise provided by law.

(b) Nothing in this section shall, in any manner or respect, affect or impair any cause of action against or any liability of any party or parties responsible for the spill, or the responsible party's agents, employees, or subcontractors, except persons immunized under subdivision (a) for response efforts, for the discharged oil, or for the vessel, terminal, pipeline, or marine facility from which the oil was discharged.

(c) The responsible party or parties shall be subject to both of the following:

(1) Notwithstanding subdivision (b) or (i) of Section 8670.56.5, or any other provision of law, be strictly and jointly and severally liable for all damages arising pursuant to subdivision (h) of Section 8670.56.5 from the response efforts of its agents, employees, subcontractors, or an oil spill cooperative of which it is a member or with which it has a

contract or other arrangement for cleanup of its oil spills, unless it would have a defense to the original spill.

(2) Remain strictly liable for any and all damages arising from the response efforts of a person other than a person specified in paragraph (1).

(d) Nothing in this section shall immunize a cooperative or any other person from liability for acts of gross negligence or willful misconduct in connection with the cleanup of a spill.

(e) This section does not apply to any action for personal injury or wrongful death.

(f) As used in this section, a ''cooperative'' means an organization of private persons which is established for the primary purpose and activity of preventing or rendering care, assistance, or advice in response to a spill or threatened spill.

(g) Except for the responsible party, membership in a cooperative shall not, in and of itself, be grounds for liability resulting from cleanup activities of the cooperative.

(h) For purposes of this section, there shall be a rebuttable presumption that an act or omission described in subdivision (a) was taken in good faith.

(i) In any situation in which immunity is granted pursuant to subdivision (a) and a responsible party is not liable, is not liable for noneconomic damages caused by another, or is partially or totally insolvent, the fund provided for in Article 7 (commencing with Section 8670.46) shall, in accordance with its terms, reimburse claims of any injured party for which a person who is granted immunity pursuant to this section would otherwise be liable.

(j) (1) The immunity granted by this section shall only apply to response efforts that are undertaken after the administrator certifies that contracts with qualified and responsible persons are in place to ensure an adequate and expeditious response to any foreseeable oil spill that may occur in marine waters for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and cleanup the oil spill in an adequate and timely manner. In negotiating these contracts, the administrator shall, to the maximum extent practicable, procure the services of persons who are willing to respond to oil spills with no, or lesser, immunity than that conferred by this section, but, in no event, a greater immunity. The administrator shall make the certification required by this subdivision on an annual basis. Upon certification, the immunity conferred by this section shall apply to all response efforts undertaken during the calendar year to which the certification applies. In the absence of the certification required by this subdivision, the immunity conferred by this section shall not attach to any response efforts undertaken by any person in marine waters.

(2) In addition to the authority to negotiate contracts described in paragraph (1), the administrator may also negotiate and enter into indemnification agreements with qualified and financially responsible persons to respond to oil spills that may occur in marine waters for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and cleanup the oil spill in an adequate and timely manner.

(3) The administrator may indemnify response contractors for (A) all damages payable by means of settlement or judgment that arise from response efforts to which the immunity conferred by this section would otherwise apply, and (B) reasonably related legal costs and expenses incurred by the responder, provided that indemnification shall only apply to response efforts undertaken after the expiration of any immunity that may exist as the result of the contract negotiations authorized in this subdivision. In negotiating these contracts, the administrator shall, to the maximum extent practicable, procure the services of persons who are willing to respond to oil spills with no, or as little, right to indemnification as possible. All indemnification shall be paid by the administrator from the Oil Spill Response Trust Fund.

(4) (A) The contracts required by this section, and any other contracts entered into by the administrator for response, containment, or cleanup of an existing spill, the payment of which is to be made from the Oil Spill Response Trust Fund created pursuant to Section 8670.46, or for response to an imminent threat of a spill, the payment of which is to be made out of the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38, shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(B) The exemption specified in subparagraph (A) applies only to contracts for which the services are used for a period of less than 90 days, cumulatively, per year.

(C) This paragraph shall not be construed as limiting the administrator's authority to exercise the emergency powers granted pursuant to subdivision (c) of Section 8670.62, including the authority to enter into emergency contracts that are exempt from approval by the Department of General Services.

(k) (1) With regard to a person who is regularly engaged in the business of responding to oil spills, the immunity conferred by this section shall not apply to any response efforts by that person that occur later than 60 days after the first day the person's response efforts commence.

(2) Notwithstanding the limitation contained in paragraph (1), the administrator may, upon making all the following findings, extend the

period of time, not to exceed 30 days, during which the immunity conferred by this section applies to response efforts:

(A) Due to inadequate or incomplete containment and stabilization, there exists a substantial probability that the size of the spill will significantly expand and (i) threaten previously uncontaminated marine or land resources, (ii) threaten already contaminated marine or land resources with substantial additional contamination, or (iii) otherwise endanger the public health and safety or harm the environment.

(B) The remaining work is of such a difficult or perilous nature that extension of the immunity is clearly in the public interest.

(C) No other qualified and financially responsible contractor is prepared and willing to complete the response effort in the absence of the immunity, or a lesser immunity, as negotiated by contract.

(3) The administrator shall provide five days' notice of his or her proposed decision to either extend, or not extend, the immunity conferred by this section. Interested parties shall be given an opportunity to present oral and written evidence at an informal hearing. In making his or her proposed decision, the administrator shall specifically seek and consider the advice of the relevant Coast Guard representative. The administrator's decision to not extend the immunity shall be announced at least 10 working days before the expiration of the immunity to provide persons an opportunity to terminate their response efforts as contemplated by paragraph (4).

(4) No person or their agents, subcontractors, or employees shall incur any liability under this chapter or any other provision of law solely as a result of that person's decision to terminate their response efforts because of the expiration of the immunity conferred by this section. A person's decision to terminate response efforts because of the expiration of the immunity conferred by this section shall not in any manner impair, curtail, limit, or otherwise affect the immunity conferred on the person with regard to the person's response efforts undertaken during the period of time the immunity applied to those response efforts.

(5) The immunity granted under this section shall attach, without the limitation contained in this subdivision, to the response efforts of any person who is not regularly engaged in the business of responding to oil spills. A person who is not regularly engaged in the business of responding to oil spills includes, but is not limited to, (A) a person who is primarily dedicated to the preservation and rehabilitation of wildlife and (B) a person who derives his or her livelihood primarily from fishing.

(*l*) As used in this section, ''response efforts'' means rendering care, assistance, or advice in accordance with the National Contingency Plan, the state oil spill contingency plan, or at the direction of the

administrator, onsite coordinator, or the Coast Guard in response to a spill or threatened spill.

SEC. 40. Section 8670.56.7 is added to the Government Code, to read:

8670.56.7. (a) A nonprofit maritime association that provides spill response services pursuant to an oil spill contingency plan approved by the administrator, and the association's officers, directors, members, and employees shall have limited liability as follows:

(1) Section 8670.56.6 applies to any nonprofit maritime association that provides spill response services pursuant to its statewide oil spill contingency plan.

(2) A nonprofit maritime association providing oil spill contingency plan response services may require, through agreement of the parties, as a condition of providing these services, the owner or operator of the nontank vessel to defend, indemnify, and hold harmless the association and its officers, directors, members, and employees from all claims, suits, or actions of any nature by whomever asserted, even though resulting, or alleged to have resulted from, negligent acts or omissions of the association or of an officer, director, member, or employee of the association in providing spill response plan services under the contract.

(3) Membership in the association or serving as a director of the association shall not, in and of itself, be grounds for liability resulting from the activities of the association in the preparation or implementation of an oil spill contingency plan.

(4) This section shall not be deemed to include the association or its officers, directors, members, or employees as a responsible party, as defined in Section 8670.3 of this code and in Section 8750 of the Public Resources Code for the purposes of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of this code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) This section does not limit the liability of any responsible party, as defined in Section 8670.3. The responsible party is liable for all damages arising from a spill, as provided in Section 8670.56.6.

(b) Section 8670.56.6 applies to any person, including, but not limited to, an oil spill cooperative, its agents, subcontractors, or employees, that contract with a nonprofit maritime association to provide spill response services for the association's oil spill contingency plan.

SEC. 41. Section 8670.64 of the Government Code is amended to read:

8670.64. (a) Any person who commits any of the following acts, shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison:

(1) Except as provided in Section 8670.27, knowingly fails to follow the direction or orders of the administrator in connection with an oil spill.

(2) Knowingly fails to notify the Coast Guard that a vessel is disabled within one hour of the disability and the vessel, while disabled, causes a discharge of oil which enters marine waters. For the purposes of this paragraph, ''vessel'' means a vessel, as defined in Section 21 of the Harbors and Navigation Code, of 300 gross registered tons or more.

(3) Knowingly engages in or causes the discharge or spill of oil into marine waters, or any person who reasonably should have known that he or she was engaging in or causing the discharge or spill of oil into marine waters, unless the discharge is authorized by the United States, the state, or another agency with appropriate jurisdiction.

(4) Knowingly fails to begin cleanup, abatement, or removal of spilled oil as required in Section 8670.25.

(b) The court shall also impose upon a person convicted of violating subdivision (a), a fine of not less than five thousand dollars ($5,000) or more than five hundred thousand dollars ($500,000) for each violation. For purposes of this subdivision, each day or partial day that a violation occurs is a separate violation.

(c) (1) Any person who knowingly does any of the acts specified in paragraph (2) shall, upon conviction, be punished by a fine of not less than two thousand five hundred dollars ($2,500) or more than two hundred fifty thousand dollars ($250,000), or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment. Each day or partial day that a violation occurs is a separate violation. If the conviction is for a second or subsequent violation of this subdivision, the person shall be punished by imprisonment in the state prison or in the county jail for not more than one year, or by a fine of not less than five thousand dollars ($5,000) or more than five hundred thousand dollars ($500,000), or by both the fine and imprisonment:

(2) The acts subject to this subdivision are all of the following:

(A) Fails to notify the Office of Emergency Services in violation of Section 8670.25.5.

(B) Continues operations for which an oil spill contingency plan is required without an oil spill contingency plan approved pursuant to Article 5 (commencing with Section 8670.28).

(C) Except as provided in Section 8670.27, knowingly fails to follow the material provisions of an applicable oil spill contingency plan.

SEC. 42. Section 8670.68.1 is added to the Government Code, to read:

8670.68.1. After the time for review has expired for a violation under this chapter or Division 36 (commencing with Section 71200) of the Public Resources Code, the administrator may apply to the clerk of

the appropriate court for a judgment to collect the administrative civil liability imposed in accordance with Section 8670.68. The application, which shall include a certified copy of the administrator's order setting liability, a hearing officer's decision if any, or a settlement agreement if any, shall constitute a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

SEC. 43. 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.

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## CHAPTER 749

An act to amend Sections 51101, 52054, and 52058 of, to add Sections 52054.3 and 52055.51 to, and to add Article 3.5 (commencing with Section 52055.600) to Chapter 6.1 of Part 28 of, the Education Code and to amend Item 6110-123-0001 of Section 2.00 of the Budget Act of 2001, relating to schools, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

I am signing Assembly Bill 961, however I am reducing the appropriation made in section 8 of this bill by $2,142,000. This section would appropriate $3.0 million to the Department of Education for training and administration costs associated with this program. Absent a detailed expenditure plan from the Department of Education justifying this need, I am unable to support an augmentation in excess of that which I believe is necessary to begin implementation of this program.

While I am signing this bill, I am concerned that numerous sections within this bill are unclear and may be interpreted in a way not intended, potentially resulting in significant costs. I am signing this bill with the understanding that the author will introduce urgency legislation to clean up these issues.

GRAY DAVIS, Governor

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

SECTION 1. Section 51101 of the Education Code is amended to read:

51101. (a) Except as provided in subdivision (d), the parents and guardians of pupils enrolled in public schools have the right and should have the opportunity, as mutually supportive and respectful partners in the education of their children within the public schools, to be informed by the school, and to participate in the education of their children, as follows:

(1) Within a reasonable period of time following making the request, to observe the classroom or classrooms in which their child is enrolled or for the purpose of selecting the school in which their child will be enrolled in accordance with the requirements of any intradistrict or interdistrict pupil attendance policies or programs.

(2) Within a reasonable time of their request, to meet with their child's teacher or teachers and the principal of the school in which their child is enrolled.

(3) To volunteer their time and resources for the improvement of school facilities and school programs under the supervision of district employees, including, but not limited to, providing assistance in the classroom with the approval, and under the direct supervision, of the teacher. Although volunteer parents may assist with instruction, primary instructional responsibility shall remain with the teacher.

(4) To be notified on a timely basis if their child is absent from school without permission.

(5) To receive the results of their child's performance on standardized tests and statewide tests and information on the performance of the school that their child attends on standardized statewide tests.

(6) To request a particular school for their child, and to receive a response from the school district. This paragraph does not obligate the school district to grant the parent's request.

(7) To have a school environment for their child that is safe and supportive of learning.

(8) To examine the curriculum materials of the class or classes in which their child is enrolled.

(9) To be informed of their child's progress in school and of the appropriate school personnel whom they should contact if problems arise with their child.

(10) To have access to the school records of their child.

(11) To receive information concerning the academic performance standards, proficiencies, or skills their child is expected to accomplish.

(12) To be informed in advance about school rules, attendance policies, dress codes, and procedures for visiting the school.

(13) To receive information about any psychological testing the school does involving their child and to deny permission to give the test.

(14) To participate as a member of a parent advisory committee, schoolsite council, or site-based management leadership team, in accordance with any rules and regulations governing membership in these organizations. In order to facilitate parental participation, schoolsite councils are encouraged to schedule a biannual open forum for the purpose of informing parents about current school issues and activities and answering parents' questions. The meetings should be scheduled on weekends, and prior notice should be provided to parents.

(15) To question anything in their child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school.

(b) In addition to the rights described in subdivision (a), parents and guardians of pupils shall have the opportunity to work together in a mutually supportive and respectful partnership with schools, and to help their children succeed in school. Each governing board of a school district shall develop jointly with parents and guardians, and shall adopt, a policy that outlines how parents or guardians of pupils, school staff, and pupils may share the responsibility for continuing the intellectual, physical, emotional, and social development and well-being of pupils at each schoolsite. The policy shall include, but is not necessarily limited to, the following:

(1) The means by which the school and parents or guardians of pupils may help pupils to achieve academic and other standards of the school.

(2) A description of the school's responsibility to provide a high quality curriculum and instructional program in a supportive and effective learning environment that enables all pupils to meet the academic expectations of the school.

(3) The manner in which the parents and guardians of pupils may support the learning environment of their children, including, but not limited to, the following:

(A) Monitoring attendance of their children.

(B) Ensuring that homework is completed and turned in on a timely basis.

(C) Participation of the children in extracurricular activities.

(D) Monitoring and regulating the television viewed by their children.

(E) Working with their children at home in learning activities that extend learning in the classroom.

(F) Volunteering in their children's classrooms, or for other activities at the school.

(G) Participating, as appropriate, in decisions relating to the education of their own child or the total school program.

(c) All schools that participate in the High Priority Schools Grant Program for Low Performing Schools established pursuant to Article 3.5 (commencing with Section 52055.600) of Chapter 6.1 of Part 28 and that maintain kindergarten or any of grades 1 to 5, inclusive, shall jointly develop with parents or guardians for all children enrolled at that schoolsite, a school-parent compact pursuant to Section 6319 of Title 20 of the United States Code.

(d) This section may not be construed so as to authorize a school to inform a parent or guardian, as provided in this section, or to permit participation by a parent or guardian in the education of a child, if it conflicts with a valid restraining order, protective order, or order for custody or visitation issued by a court of competent jurisdiction.

SEC. 2. Section 52054 of the Education Code is amended to read:

52054. (a) Commencing in the 2001–02 fiscal year, by November 15 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program may do either of the following:

(1) Contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team, consisting of a majority of nonschoolsite personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(2) Contract with any entity that has proven successful expertise specific to the challenges inherent in low-performing schools. These entities may include, but are not limited to:

(A) Institutions of higher education.

(B) County offices of education.

(C) School district personnel.

(b) The selected external evaluator or entity shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator or entity shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below average performance.

(2) Hold a public meeting at the school, in cooperation with the principal, to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit, at the public meeting, the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator or entity and the community team in the development or modification of the action plan pursuant to this section or Section 52054.3.

(4) Provide technical assistance to the schoolsite.

(5) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator or entity and the community team in the development or modification of the action plan pursuant to this section or Section 52054.3. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(c) By February 15 of the school year in which the school is selected to participate, the selected external evaluator or entity, in collaboration with the broad-based schoolsite and community team selected pursuant to subdivision (a), shall complete a review of the school that identifies weaknesses that contribute to the school's below average performance, make recommendations for improvement, and begin to develop an action plan to improve the academic performance of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a scope that requires reimbursement by the Commission on State Mandates for its implementation.

(d) At a minimum, the action plan shall do all of the following:

(1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 33126.

(2) Identify the current barriers at the school and district toward improvements in pupil achievement.

(3) Identify schoolwide and districtwide strategies to remove these barriers.

(4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.

(5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information

regarding the achievement of English language learners, pupils with exceptional needs, pupils who qualify for free and reduced price meals, and all pupils, in numerically significant subgroups.

(6) Set short-term academic objectives pursuant to Section 52052 for a two-year period that will allow the school to make adequate progress toward the growth targets established for each participating school for pupil achievement as measured by all of the following to the extent that the data is available for the school:

(A) The achievement test administered pursuant to Section 60640.

(B) Graduation rates for grades 7 to 12, inclusive.

(C) Attendance rates for pupils and school personnel for elementary, middle, and secondary schools.

(D) Any other indicators approved by the State Board of Education.

(e) The school action plan shall focus on improving pupil academic performance, improving the involvement of parents and guardians, improving the effective and efficient allocation of resources and management of the school, and identifying and developing solutions that take into account the underlying causes for low performance by pupils.

(f) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(g) The school action plan may propose to increase the number of instructional days offered at the schoolsite and also may propose to increase up to a full 12 months the amount of time for which certificated employees are contracted, if all of the following conditions are met:

(1) Provisions of the plan proposed pursuant to this subdivision shall not violate current applicable collective bargaining agreements.

(2) An agreement is reached with the exclusive representative concerning staffing specifically to accommodate the extended school year or 12-month contract.

(h) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(i) Upon its completion, the action plan shall be submitted to the governing board of the school districts for its approval. The approval may be conducted during a regularly scheduled public meeting.

SEC. 3. Section 52054.3 is added to the Education Code, to read:

52054.3. A school selected on or after September 2001 may elect to use an existing plan instead of the action plan required pursuant to Section 52054 if that plan meets the requirements specified pursuant to subdivisions (c), (d), (e), (f), (g), (h), and (i) of Section 52054. If an existing plan needs modification, the external evaluator or entity with which the school district contracts pursuant to Section 52054 shall provide technical assistance in making those modifications.

SEC. 4. Section 52055.51 is added to the Education Code, immediately following Section 52055.5, to read:

52055.51. (a) Instead of the actions specified in subdivision (c) of Section 52055.5, as that section read on January 1, 2001, and notwithstanding any other provision of law, the Superintendent of Public Instruction, with the approval of the State Board of Education, may require the district to enter into a contract with a school assistance and intervention team.

(b) Team members should possess a high degree of knowledge and skills in the areas of school leadership, curriculum, and instruction aligned to state academic content and performance standards, classroom management and discipline, academic assessment, parent-school relations, and evaluation and research-based reform strategies and have proven successful expertise specific to the challenges inherent in low-performing schools.

(c) The team shall provide intensive support and expertise to implement the school reform initiatives in the plan. Decisions about interventions shall be data driven. A school assistance and intervention team shall work with school staff, site planning teams, administrators, and district staff to improve pupil literacy and achievement by assessing the degree of implementation of the current action plan, refining and revising the action plan, and making recommendations to maximize the use of fiscal resources and personnel in achieving the goals of the plan. The district shall provide support and assistance to enhance the work of the team at the targeted schoolsites.

(d) Not later than 60 days after the school's API becomes public, the team must have completed an initial report. The report shall include recommendations for corrective actions chosen from a range of interventions, including the reallocation of district fiscal resources to ensure that appropriate resources are targeted to those specific interventions identified in the recommendations of the team for the targeted schools and other changes deemed appropriate to make progress toward meeting the schools growth target. Not later than 90 days after the API is made public, the governing board of the school district shall adopt the team's recommendations at a regularly scheduled meeting of the governing board. The governing board may not place the adoption on the consent calendar. The report shall be submitted to the Superintendent of Public Instruction and State Board of Education.

(e) No less than three times during the year, the school district and schoolsite shall present the team with data regarding progress toward the goals established by the team's initial assessment. The data shall be presented to the governing board of the school district at a regularly scheduled meeting. The team shall, to the extent possible, utilize existing site data. The data shall also be provided to the Superintendent

of Public Instruction and State Board of Education. Every effort shall be made to report this data in a manner that minimizes the length and complexity of the reporting requirement in order to maximize the focus on improving pupil literacy and achievement.

(f) An action taken pursuant to this paragraph shall not increase local costs or require reimbursement by the Commission on State Mandates.

SEC. 5. Article 3.5 (commencing with Section 52055.600) is added to Chapter 6.1 of Part 28 of the Education Code, to read:

## Article 3.5. High Priority Schools Grant Program for Low Performing Schools

52055.600. (a) The High Priority Schools Grant Program for Low Performing Schools is hereby established. Participation in this program is voluntary.

(b) From funds made available for purposes of this article, the Superintendent of Public Instruction shall allocate two hundred dollars ($200) per pupil to eligible schools for implementation of a school action plan approved pursuant to this article. In the first year of participation, a schoolsite may receive thirty-three dollars and thirty-three cents ($33.33) per pupil for each month remaining in the fiscal year ending June 30, 2002, beginning in the month immediately following the date of approval by the governing board of the school district of the action plan required pursuant to this article. If the plan is not approved prior to the end of the fiscal year, the funding shall be similarly prorated in the subsequent year.

(c) It is the intent of the Legislature that federal funding provided pursuant to the Comprehensive School Reform Demonstration Program (P.L. 105-78) supplement, not supplant, funding received pursuant to this article.

(d) Funds received pursuant to this article may not be used to match funds received pursuant to Article 3 (commencing with Section 52053).

(e) The school district shall keep fiscal records available for inspection that affirm allocation to schoolsites in accordance with this section and shall allocate resources in a manner that does not delay their use.

52055.605. (a) The Superintendent of Public Instruction, with the approval of the State Board of Education, shall identify schools ranked in deciles 1 to 5, inclusive, on the Academic Performance Index (API).

(b) The Superintendent of Public Instruction shall invite schools identified pursuant to subdivision (a) to participate in the High Priority Schools Grant Program for Low Performing Schools. Notwithstanding subdivision (h) of Section 52053, in order to be eligible for funding from the High Priority Schools Grant Program for Low Performing Schools,

a school shall also participate in the Immediate Intervention/Underperforming Schools Program. A school participating in both programs may elect to submit only one application and one plan for both programs. A school participating in the Immediate Intervention/Underperforming Schools Program before the date of the enactment of the act adding this section is also eligible for participation in the High Priority Schools Grant Program for Low Performing Schools.

(c) First priority for participation in the High Priority Schools Grant Program for Low Performing Schools shall be given to schools ranked on the API in decile 1. Second priority shall be given to schools in decile 2. Third priority shall be given to schools in decile 3. Fourth priority shall be given to schools in decile 4. Fifth priority shall be given to schools in decile 5. Within each decile, priority shall be given to the lowest ranked schools.

(d) Notwithstanding any other provision of law and if funds are available for this purpose, the number of schools within the designated cohorts of the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053 may exceed the maximum numbers specified in that section in order to participate in the program established pursuant to this article.

(e) If a school ranked in decile 1 of the API applies to participate in the federal Comprehensive School Reform Demonstration Program (P.L. 105-78), but there are insufficient funds to allow that school to participate in that program, that school shall be automatically approved to the extent funding is available for participation in the Immediate Intervention/Underperforming Schools Program and shall be deemed to have complied with the requirements of Section 52054.

(f) The State Board of Education may allow continuation high schools to apply for and receive funding pursuant to this article if those continuation high schools report pupil performance that is equivalent to that of high schools ranked in deciles 1 and 2 on the Academic Performance Index and the board determines that the state will be able to adequately determine growth in pupil performance in a valid and reliable manner for the purpose of accountability pursuant to this article. The State Board of Education may establish a limit on the number of continuation high schools that may be funded to reflect their proportion of low performing pupils in grades 9 to 12, inclusive, and may adopt criteria limiting the eligibility for funding, pursuant to this article, of continuation high schools with a high level of per pupil funding from the continuation high school revenue limit add-on.

52055.610. (a) Fourteen days after the effective date of the act adding this section, the Superintendent of Public Instruction shall

establish a procedure that is consistent with this article for the approval of applications and school action plans.

(b) Notwithstanding the existing application process established pursuant to Article 3 (commencing with Section 52053), in developing an action plan to be submitted with the application for funding pursuant to this article, a school may choose from the following options:

(1) A school district on behalf of an eligible school under its jurisdiction may elect to receive fifty thousand dollars ($50,000) as a planning grant from funds appropriated for purposes of this article. These planning grant funds shall be used for technical assistance in the development of the school action plan. Technical assistance includes assistance provided by school district personnel, county offices of education, universities, a state approved external evaluator, or any other entity that has proven successful expertise specific to the challenges inherent in low-performing schools. If the school action plan is approved, the Superintendent of Public Instruction shall provide funding for its implementation. Planning grant funds, as well as other funds available to school districts pursuant to this article, may be used for on-going technical assistance throughout the implementation of the action plan and continued participation in the program established pursuant to Article 3 (commencing with Section 52053) and the program established pursuant to this article.

(2) A school district, on behalf of an eligible school under its jurisdiction, may elect to forego the fifty thousand dollars ($50,000) planning grant and immediately submit its application and school action plan. If a school chooses this option, the Superintendent of Public Instruction shall take one of the following actions:

(A) Recommend approval of the application by the State Board of Education and action plan and provide funding for implementation of the school action plan.

(B) Request additional clarification and technical changes, after which the school and district shall resubmit the application and school action plan with the clarifications and changes for approval. If the application and school action plan is approved, the Superintendent of Public Instruction shall provide funding for implementation of the school action plan.

(C) Disapprove the plan in which case a school district on behalf of an eligible school under its jurisdiction shall receive a fifty thousand dollars ($50,000) planning grant that shall be used for technical assistance in the redevelopment of the school action plan according to the department's recommendations. Technical assistance includes assistance provided by school district personnel, county offices of education, universities, a state approved external evaluator, or any other

entity that has proven expertise specific to the challenges inherent in low-performing schools.

(c) The following deadlines apply for the 2001–02 fiscal year:

(1) A school district on behalf of an eligible school under its jurisdiction shall submit the application and school action plan to the Superintendent of Public Instruction for review and approval by March 15, 2002.

(2) The Superintendent of Public Instruction shall make a recommendation to the State Board of Education regarding approval or disapproval of applications and school action plans by April 15, 2002. The State Board of Education shall approve or disapprove the application and action plan by April 30, 2002. Upon approval by the State Board of Education, the State Department of Education shall allocate funding to schools for the implementation of the action plan. If the State Board of Education fails to approve or disapprove the application and school action plan by April 30, 2002, the recommendation of the Superintendent of Public Instruction shall be deemed to be adopted and funding for implementation of the action plan shall be allocated.

(3) If the Superintendent of Public Instruction takes the action specified in subparagraph (B) of paragraph (2) of subdivision (b), the school and school district shall resubmit the application and school action plan with the clarifications and changes for approval by May 15, 2002, and the Superintendent of Public Instruction shall make a recommendation to the State Board of Education regarding approval or disapproval by June 15, 2002. The State Board of Education shall approve or disapprove the application and action plan by June 30, 2002. If the action plan is approved, the department shall allocate funding to the school district on behalf of an eligible school under its jurisdiction for implementation of the action plan. If the State Board of Education fails to approve or disapprove the application and school action plan by June 30, 2002, the recommendation of the Superintendent of Public Instruction shall be deemed to be adopted and funding for implementation of the action plan.

(4) A school district may request that the State Board of Education waive the deadlines set forth in this subdivision. The State Board of Education may grant a waiver request made pursuant to this paragraph.

52055.615. (a) If the Superintendent of Public Instruction invites a school to participate in either the High Priority Schools Grant Program for Low Performing Schools or the Immediate Intervention/Underperforming Schools Program, the governing board of the school district shall hold a public hearing at a regularly scheduled meeting to discuss whether or not to apply for participation in these programs and how to address the needs of the school and pupils.

(b) If a school district, on behalf of an eligible school under its jurisdiction, decides not to accept the invitation to participate in the High Priority Schools Grant Program for Low Performing Schools or the Immediate Intervention/Underperforming Schools Program, the governing board of the school district shall hold a public hearing at a regularly scheduled meeting to discuss the reasons and rationale for not accepting the invitation and explain how the district intends to address the needs of the school and pupils. This section does not apply to school districts with jurisdiction over schools for which the Superintendent of Public Instruction has indicated that funding would not be available. The governing board shall not place the discussion required pursuant to this subdivision on the consent calendar of the hearing.

(c) The governing board shall notify, in writing, the following persons and entities of the public hearings required pursuant to subdivisions (a) and (b):

(1) Representative parent organizations at the schoolsite, including the parent teacher association, parent teacher clubs, and schoolsite councils. The district is encouraged also to notify parents directly through appropriate means. Notifications to parents shall comply with Article 4 (commencing with Section 48985) of Chapter 6 of Part 27.

(2) All local major media outlets.

(3) The local mayor.

(4) All members of the city council.

(5) All members of the county board of supervisors.

(6) County superintendents of schools.

(7) County board of education.

52055.620. (a) As a condition of the receipt of funds, a school action plan shall be based upon the following:

(1) It shall be research based and data driven.

(2) It shall include ongoing data gathering for the purposes of this program so that progress can be measured and verified and the plan can be modified based on the data.

(3) It shall be grounded in the findings from an initial needs assessment.

(4) It shall evidence a commitment by the school community to implement the plan. The plan shall describe how this commitment will be evidenced.

(5) It shall make clear that there is a heightening of expectations on the part of all personnel associated with the schoolsite that all children can learn and every school can succeed.

(6) It shall ensure that an environment that is conducive to teaching and learning is provided at the schoolsite.

(7) It shall identify additional human, financial, and other resources available to the school to be used in the implementation of the school action plan.

(b) (1) The action plan shall be developed, in partnership with the school district, by the schoolsite council, as defined in Section 52012, or if the school does not have a schoolsite council, by a schoolwide advisory group or school support group that conforms to the requirements of Section 52012 and whose members are self-selected.

(2) Notwithstanding paragraph (1), a school participating in the Immediate Intervention/Underperforming Schools Program prior to the effective date of the act adding this section may continue using its school action team for purposes of developing an action plan pursuant to this article.

(c) In developing a school action plan, the school and school district shall use the technical assistance from school district personnel, county offices of education, universities, a state approved external evaluator, or any other person or entity that has proven successful expertise specific to the challenges inherent in low-performing schools. In addition, the school and district may include an individual to facilitate the activities related to the development of this plan.

(d) The action plan shall include a strategy, jointly developed by the school district and the exclusive bargaining representative of the certificated employees of the district, for addressing the distribution of experienced credentialed teachers throughout the district, including an agreement by the district and the exclusive bargaining representative of the certificated staff on how they are going to achieve a balance in that distribution. This collaboration shall take place outside of collective bargaining and shall strive to develop a strategy that will attract and retain equal ratios of credentialed teachers at each school in the district. This collaboration shall include discussions on ways to maximize current options to recruit credentialed teachers to the district, use of regional recruitment centers, ensuring that newly hired credentialed teachers are assigned in alignment with the goal of even distribution of credentialed teachers, and ensuring that low-performing schools provide a necessary teaching and learning environment to retain a fully credentialed teaching staff.

(e) The action plan may include any existing plan a school may have developed for another program, that may include existing strategies that meet the requirements of the essential components of a school action plan specified in Section 52055.625.

52055.625. (a) It is the intent of the Legislature that the lists contained in paragraph (2) of subdivisions (c), (d), (e), and (f) be considered options that may be considered by a school in the development of its school action plan and that a school not adopt all of

the listed options as a condition of funding under the terms of this act. Instead, this listing of options is intended to provide the opportunity for focus and strategic planning as schools plan to address the needs of low performing pupils.

(b) As a condition of the receipt of funds, a school action plan shall include each of the following essential components:

(1) Pupil literacy and achievement.

(2) Quality of staff.

(3) Parental involvement.

(4) Facilities, curriculum, instructional materials, and support services.

(c) (1) The pupil literacy and achievement component shall contain a strategy to focus on increasing pupil literacy and achievement, with necessary attention to the needs of English language learners. At a minimum, this strategy shall include a plan to achieve the following goals:

(A) Each pupil at the school will be provided appropriate instructional materials aligned with the academic content and performance standards adopted by the State Board of Education as required by law.

(B) Each significant subgroup at the school will demonstrate increased achievement based on API results by the end of the implementation period.

(C) Each English language learner at the school will demonstrate increased performance based on the English language development test required by Section 60810 and the achievement tests required pursuant to Section 60640.

(2) To achieve the goals in paragraph (1), a school in its action plan may include, among other things, any of the following options:

(A) Selective class size reduction in key curricular areas provided this does not result in a decrease in the proportion of experienced credentialed teachers at the schoolsite.

(B) Increased learning time in key curricular areas identified as needing attention, including mathematics.

(C) Targeted intensive reading instruction utilizing reading capacity-level materials that may include, but are not limited to, the following strategies:

(i) The development of a reading competency program for pupils in grades 5 to 8, inclusive, whose reading scores are at or below the 40th percentile or in the two lowest performance levels, as adopted by the State Board of Education, on the reading portion of the achievement test, authorized by Section 60640. This program may include direct instruction in reading at grade level utilizing the English language arts content standards adopted pursuant to Section 60605. Additionally, this

program may offer specialized intervention that utilizes state approved instructional materials adopted pursuant to Section 60200. It is the intent of the Legislature, as a recommendation, that this curriculum consist of at least one class period during the regular schoolday taught by a teacher trained in the English language arts standards pursuant to Section 60605. It is also the intent of the Legislature, as a recommendation, that periodic assessments throughout the year be conducted to monitor the progress of the pupils involved.

(ii) The use of a library media teacher to work cooperatively with every teacher and principal at the schoolsite to develop and implement an independent and free reading program, help teachers determine a pupil's reading level, order books that have been determined to meet the needs of pupils, help choose books at pupils' independent reading levels, and assure that pupils read a variety of genres across all academic content areas. For purposes of this article, ''library media teacher'' means a classroom teacher who possesses or is in the process of obtaining a library media teacher services credential consistent with Section 44868.

(D) Mentoring programs for pupils.

(E) Community, business, or university partnerships with the school.

(d) (1) The quality of staff component shall contain a strategy to attract, retain, and fairly distribute the highest quality staff at the school, including teachers, administrators, and support staff. At a minimum, this strategy shall include a plan to achieve the following goals:

(A) An increase in the number of credentialed teachers working at that schoolsite.

(B) An increase in or targeting of professional development opportunities for teachers related to the goals of the action plan and English language development standards adopted by the State Board of Education aligned with the academic content and performance standards, including, but not limited to, participation in professional development institutes established pursuant to Article 2 (commencing with Section 92220) of Chapter 5 of Part 65.

(C) By the end of the implementation period, successful completion by the schoolsite administrators of a program designed to maximize leadership skills.

(2) To achieve the goals in paragraph (1) a school may include in its action plan, among others, any of the following options:

(A) Incentives to attract credentialed teachers and quality administrators to the schoolsite, including, but not limited to, additional compensation strategies similar to those authorized pursuant to Section 44735.

(B) A school district preintern or intern program within which eligible emergency permit teachers located at the schoolsite would be required to participate, unless those individuals are already participating

in another teacher preparation program that leads to the attainment of a valid California teaching credential.

(C) Common planning time for teachers, administrators, and support staff focused on improving pupil achievement.

(D) Mentoring for site administrators, peer assistance for credentialed teachers, and support services for new teachers, including, but not limited to, the Beginning Teacher Support and Assessment System.

(E) Providing assistance and incentives to teachers for completion of professional certification programs and toward attaining BCLAD or CLAD certification.

(F) Increasing professional development in state academic content and performance standards, including English language development standards.

(e) (1) The parental involvement component shall contain a strategy to change the culture of the school community to recognize parents and guardians as partners in the education of their children and to prepare and educate parents and guardians in the learning and academic progress of their children. At a minimum, this strategy shall include a commitment to develop a school-parent compact as required by Section 51101 and a plan to achieve the goal of maintaining or increasing the number and frequency of personal parent and guardian contacts each year at the schoolsite and school-home communications designed to promote parent and guardian support for meeting state standards and core curriculum requirements.

(2) To achieve the goals in subdivision (a), a school may in its action plan include, among others, any of the following options:

(A) Parent and guardian homework support classes.

(B) A program of regular home visits.

(C) After school and evening opportunities for parents, guardians, and pupils to learn together.

(D) Training programs to educate parents and guardians about state standards and testing requirements, including the high school exit examination.

(E) Creation, maintenance, and support of parent centers located on schoolsites to educate parents and guardians regarding pupil expectations and provide support to parents and guardians in their efforts to help their children learn.

(F) Programs targeted at parents and guardians of special education pupils.

(G) Efforts to develop a culture at the schoolsite focused on college attendance, including programs to educate parents and guardians regarding college entrance requirements and options.

(H) Providing more bilingual personnel at the schoolsite and at school related functions to communicate more effectively with parents and guardians who speak a language other than English.

(I) Providing an opportunity for parents to monitor online, if the technology is available, and in compliance with applicable state and federal privacy laws, the academic progress and attendance of their children.

(f) (1) The facilities, curriculum, instructional materials, and support services component shall contain a strategy to provide an environment that is conducive to teaching and learning and that includes the development of a high-quality curriculum and instruction aligned with the academic content and performance standards adopted pursuant to Section 60605 and English language development standards adopted pursuant to Section 60811. At a minimum, this strategy shall include the goal of providing adequate logistical support including, but not limited to, curriculum, quality instruction, instructional materials, support services, and supplies for every pupil.

(2) To achieve the goal specified in paragraph (1), a school in its action plan may include, among others, any of the following options:

(A) State and locally developed valid and reliable assessments based on state academic content standards.

(B) Increased learning time in key curricular areas identified as needing attention, including mathematics.

(C) The addition of more pupil support services staff, including, but not limited to, paraprofessionals, counselors, library media teachers, nurses, psychologists, social workers, speech therapists, audiologists, and speech pathologists.

(D) Pupil support centers for additional tutoring or homework assistance.

(E) Use of most current standards-aligned textbooks adopted by the State Board of Education, including materials for English language learners.

(F) For secondary schools, offering advanced placement courses and courses that meet the requirements for admission to the University of California or the California State University.

(g) A school action plan to improve pupil performance that is developed for participation in the program established pursuant to this article shall meet the requirements of subdivisions (d) and (e) of Section 52054 and this article.

52055.630. (a) Before a school action plan is submitted to the Superintendent of Public Instruction, the plan shall be presented at a regularly scheduled public meeting of the governing board of the school district.

(b) In addition to involving the teachers in the development of the action plan, the school district shall certify that it has met and consulted with the exclusive representative of certificated employees on the action plan. The governing board of the school district shall approve the plan and certify that the plan contains all of the essential components required pursuant to subdivision (a) of Section 52055.625.

(c) This program and an action plan for any schools participating in the program shall not be deemed to supersede conflicting language in the collective bargaining contracts of that school's district. All matters within the scope of collective bargaining continue to be subject to it.

52055.640. (a) As a condition of the receipt of funds and to ensure that the school is progressing towards meeting the goals of each of the essential components of its school action plan, each year the school district shall submit a report to the Superintendent of Public Instruction that includes the following:

(1) The academic improvement of pupils within the participating school as measured by the tests under Section 60640 and the English language development test administered pursuant to Section 60810.

(2) The improvement of distribution of experienced teachers holding a valid California teaching credential across the district.

(3) The availability of instructional materials in core content areas that are aligned with the academic content and performance standards, including textbooks, for each pupil, including English language learners.

(4) The number of parents and guardians presently involved at each participating schoolsite as compared to the number participating at the beginning of the program.

(5) The number of pupils attending afterschool, tutoring, or homework assistance programs.

(6) For participating secondary schools, the number of pupils who are enrolled in and successfully completing advanced placement courses, by type, and requirements for admission to the University of California or the California State University, including courses in algebra, biology, and United States or world history.

(b) The report on the pupil literacy and achievement component shall be disaggregated by numerically significant subgroups, as defined in Section 52052, and English language learners and have a focus on improved scores in reading and mathematics as measured by the following:

(1) The Academic Performance Index, including the data collected pursuant to tests that are part of the Standardized Testing And Reporting program and the writing sample that is part of that program.

(2) The results of the English language development test or the primary language test pursuant to Section 60640.

(3) Graduation rates, when the methodology for collecting this data has been confirmed to be valid and reliable.

(4) In addition, a school may use locally developed assessments to assist it in determining the pupil progress in academic literacy and achievement.

(c) The report on the quality of staff component shall include, but not limited to, the following information:

(1) The number of teachers at the schoolsite holding a valid California teaching credential or district or university intern certificate or credential compared to those teachers at the same schoolsite holding a preintern certificate, emergency permit, or waiver.

(2) The number and ratio of teachers across the district holding a valid California teaching credential or district or university intern certificate or credential compared to those holding a preintern certificate, emergency permit, or waiver.

(3) The number of principals having completed training pursuant to Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25.

(4) The number of principals by credential type or years of experience and length of time at the schoolsite by years.

(d) The report on the parental involvement component shall include explicit involvement strategies being implemented at the schoolsite that are directly linked to activities supporting pupil academic achievement and verification that the schoolsite has developed a school-parent compact as required by Section 51101.

(e) All comparisons made in the reports required pursuant to this section shall be based on baseline data provided by the district and schoolsite in the action plan that is certified and submitted with the initial application.

(f) To the extent that data is already reported to the Superintendent of Public Instruction, a school district need not include the data in the reports submitted pursuant to this section.

(g) Before submitting the reports required pursuant to this section, the school district shall, at a regularly scheduled public meeting of the governing board, review a participating school's progress towards achieving those goals.

52055.645. (a) For the purpose of evaluating academic growth in core curriculum areas and determining the efficacy of the school action plan, schools are strongly encouraged to assess the academic progress of pupils on an annual basis and to evaluate the results in order to determine whether changes to the schoolsite plan are needed.

(b) In conducting these annual assessments, a school shall use the English language development test where appropriate and the tests that are part of the Standardized Testing and Reporting Program. In addition,

a school may use any curriculum-based achievement test to assess pupil growth.

(c) The results of these annual assessments shall be reported annually to the school district. The State Board of Education may use these results as quantifiable measurements of significant growth when determining whether to grant a waiver for an additional year of funding.

52055.647. As a condition of funding, a school shall certify that the eligible teachers and administrators assigned to a participating school will participate in the programs established pursuant to Assembly Bill 466 of the 2001–02 Regular Session and Article 4.6 (commencing with Section 44510) of Chapter 3 of Part 25.

52055.650. (a) Section 52055.5 does not apply to a school participating in the High Priority School Grant Program.

(b) Twenty-four months after receipt of funding for implementation of the action plan pursuant to Sections 52054.5 and 52055.600 or no sooner than July 1, 2004, a school that has not met its growth targets each year shall be subject to review by the State Board of Education. This review shall include an examination of the school's progress relative to the components and reports made pursuant to Section 52055.640. The Superintendent of Public Instruction, with the approval of the State Board of Education, may direct that the governing board of a school take appropriate action and adopt appropriate strategies to provide corrective assistance to the school in order to achieve the components and benchmarks established in the school's action plan.

(c) Thirty-six months after receipt of funding to implement a school action plan or no sooner than July 1, 2005, a school that has met or exceeded its growth target each year shall receive a monetary or nonmonetary award, under the Governor's Performance Award Program, as set forth in Section 52057. Funds received pursuant to that section may be used at the school's discretion.

(d) Thirty-six months after receipt of funding to implement a school action plan or no sooner than July 1, 2005, a school that has not met its growth targets each year, but demonstrates significant growth, as determined by the State Board of Education, shall continue to participate in the program and receive funding as specified in Sections 52054.5 and 52055.600.

(e) Notwithstanding any other provision of law, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall follow the course of action prescribed by paragraph (1) or (2) with respect to a school that does not meet its growth targets within the periods described in either subdivision (c) or (d), as applicable, or no later than July 1, 2005, and has failed to show significant growth, as determined by the State Board of Education.

(1) Require the district to enter into a contract with a school assistance and intervention team.

(A) Team members should possess a high degree of knowledge and skills in the areas of school leadership, curriculum, and instruction aligned to state academic content and performance standards, classroom management and discipline, academic assessment, parent-school relations, and evaluation and research-based reform strategies and have proven successful expertise specific to the challenges inherent in low-performing schools.

(B) The team shall provide intensive support and expertise to implement the school reform initiatives in the plan. Decisions about interventions shall be data driven. A school assistance and intervention team shall work with school staff, site planning teams, administrators, and district staff to improve pupil literacy and achievement by assessing the degree of implementation of the current action plan, refining and revising the action plan, and making recommendations to maximize the use of fiscal resources and personnel in achieving the goals of the plan. The district shall provide support and assistance to enhance the work of the team at the targeted schoolsites.

(C) Not later than 60 days after the school's API becomes public, the team must have completed an initial report. The report shall include recommendations for corrective actions chosen from a range of interventions, including the reallocation of district fiscal resources to ensure that appropriate resources are targeted to those specific interventions identified in the recommendations of the team for the targeted schools and other changes deemed appropriate to make progress toward meeting the school's growth target. Not later than 90 days after the API is made public, the governing board of the school district shall adopt the team's recommendations at a regularly scheduled meeting of the governing board. The governing board may not place the adoption on the consent calendar. The report shall be submitted to the Superintendent of Public Instruction and State Board of Education.

(D) No less than three times during the year, the school district and schoolsite shall present the team with data regarding progress toward the goals established by the team's initial assessment. The data shall be presented to the governing board of the school district at a regularly scheduled meeting. The team shall, to the extent possible, utilize existing site data. The data shall also be provided to the Superintendent of Public Instruction and State Board of Education. Every effort shall be made to report this data in a manner that minimizes the length and complexity of the reporting requirement in order to maximize the focus on improving pupil literacy and achievement.

(E) An action taken pursuant to this paragraph shall not increase local costs or require reimbursement by the Commission on State Mandates.

(2) The Superintendent of Public Instruction shall assume all the legal rights, duties, and powers of the governing board with respect to the school. The Superintendent of Public Instruction, in consultation with the State Board of Education and the governing board of the school district, shall reassign the principal of that school subject to the findings in subdivision (i). In addition to reassigning the principal, the Superintendent of Public Instruction, in consultation with the State Board of Education, shall, notwithstanding any other provision of law, do at least one of the following:

(A) Revise attendance options for pupils to allow them to attend any public school in which space is available. If additional attendance options are made available, nothing in this option shall be construed to require either the sending or receiving school district to incur additional transportation costs.

(B) Allow parents or guardians to apply directly to the State Board of Education for the establishment of a charter school and allow parents or guardians to establish the charter school at the existing schoolsite.

(C) Under the supervision of the Superintendent of Public Instruction, assign the management of the school to a college, university, county office of education, or other appropriate educational institution. However, the Superintendent of Public Instruction may not assume the management of the school.

(D) Reassign other certificated employees of the school.

(E) Renegotiate a new collective bargaining agreement at the expiration of the existing collective bargaining agreement.

(F) Reorganize the school.

(G) Close the school.

(f) In addition to the actions listed in subdivision (e), the Superintendent of Public Instruction, in consultation with the State Board of Education, may take any other action considered necessary or desirable against the school district or the school district governing board, including appointment of a new superintendent or suspension of the authority of the governing board with respect to a school that does not meet its growth targets within the periods described in either subdivision (b) or (c), as applicable, and has failed to show significant growth, as determined by the State Board of Education.

(g) Before the Superintendent of Public Instruction may take any action against a principal pursuant to subdivision (e), the Superintendent of Public Instruction or a designee of the superintendent shall hold a public hearing on the matter in the school district and make both of the following findings:

(1) A finding that the principal had the authority to take specific enumerated actions that would have helped the school meet its performance goals.

(2) A finding that the principal failed to take specific enumerated actions pursuant to paragraph (1).

(h) An action taken pursuant to subdivision (e), (f), or (g) shall not increase local costs or require reimbursement by the Commission on State Mandates.

(i) An action taken pursuant to subdivision (e), (f), or (g) shall be accompanied by specific findings by the Superintendent of Public Instruction and the State Board of Education that the action is directly related to the identified causes for continued failure by a school to meet its performance goals.

52055.655. (a) Notwithstanding subdivision (c) of Section 52055.650, a school participating in the High Priority Schools Grant Program for Low Performing Schools that meets or exceeds its API growth target shall continue to receive funding under this program in the amount specified in Sections 52054.5 and 52055.600 for one additional year of implementation, less the amount received pursuant to Section 52057.

(b) From funds made available to the State Department of Education pursuant to the act adding this section, the State Department of Education shall conduct a study on the issue of sustainability of funding for low-performing schools. The issues to be addressed in this study shall include, but are not limited to, the following:

(1) An objective rather than a comparative view of the necessity of sustaining supplemental funding over time to address the ongoing needs of low-performing pupils, and the impact of policies that only provide funding over a specified period of time.

(2) An analysis of the ability of a school to sustain growth in academic achievement, particularly when the pupil population that continuously attends the school manifests issues of poverty and low socioeconomic status, and other characteristics that are generally out of the direct control of the school.

SEC. 6. Section 52058 of the Education Code is amended to read:

52058. (a) Each school district with schools participating in the Immediate Intervention/Underperforming Schools Program established pursuant to Section 52053 and the High Priority Schools Grant Program for Low Performing Schools established pursuant to Section 52055.600 shall submit to the Superintendent of Public Instruction an evaluation of the impact, costs, and benefits of the program as it relates to the school district and the schools under its jurisdiction that are participating in the program and whether or not the schools met their growth targets, with an analysis of the reasons why the schools have or have not met those growth targets. Costs to develop and submit the evaluation shall be funded with resources provided pursuant to Article 3 (commencing with Section 52053). The evaluation shall be submitted by November 30,

subsequent to the first full year of action plan implementation by participating schools, and on November 30, of each year thereafter.

(b) By January 15, 2000, the Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, the guidelines for a request for proposal for an independent evaluator as described in this subdivision. By September 1, 2000, the Superintendent of Public Instruction shall contract with an independent evaluator to prepare a comprehensive evaluation of the implementation, impact, costs, and benefits of the Immediate Intervention/Underperforming Schools Program, the High Priority Schools Grant Program for Low Performing Schools, and the High Achieving/Improving Schools Program. The preliminary results of the evaluation shall be disseminated to the Legislature, the Governor, and interested parties no later than March 31, 2002, with a final report no later than June 30, 2002. The final report shall include recommendations for necessary or desirable modifications to the programs established pursuant to this chapter.

(c) The evaluations shall consider all of the following:

(1) Pupil performance data, including, but not limited to, results of assessments used to determine whether or not schools have made significant progress towards meeting their growth targets.

(2) Program implementation data, including, but not limited to, a review of startup activities, community support, parental participation, staff development activities associated with implementation of the program, percentage of fully credentialed teachers, percentage of teachers who hold emergency credentials, percentage of teachers assigned outside their subject area of competence, the accreditation status of the school if appropriate, average class size per grade level, and the number of pupils in a multitrack year-round educational program.

(3) (A) Pupil performance data, and its impact on the API, for each of the following subgroups:

(i) English language learners.

(ii) Pupils with exceptional needs.

(iii) Pupils that qualify for free or reduced price meals and are enrolled in schools that receive funds under Chapter 1 of the federal Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (P.L. 100-290).

(B) Information concerning individual pupils may not be disclosed in the process of preparing pupil performance data pursuant to this subdivision.

(d) The Superintendent of Public Instruction shall recommend and the State Board of Education shall approve a schedule for biennial evaluations of the programs established pursuant to this chapter, subsequent to the evaluation required by this section. The biennial

evaluations shall be submitted, with appropriate recommendations, by June 30 of every odd-numbered year, commencing with the year 2003.

SEC. 7. Item 6110-123-0001 of Section 2.00 the Budget Act of 2001 is amended to read:

6110–123–0001—For local assistance, Department of Education (Proposition 98), for implementation of the Public Schools Accountability Act, pursuant to Chapter 6.1 (commencing with Section 52050) of Part 28 of the Education Code ..... 514,970,000

Schedule:

(1) 20.60.030.031–Immediate Intervention/Underperforming Schools Program ..... 160,970,000

(2) 20.60.030.032–High Achieving/Improving Schools Program .... 157,000,000

(3) 20.60.030.034–Low–Performing Schools ..... 197,000,000

Provisions:

1. Funds appropriated in Schedule (1) are provided solely for the purpose of implementing the Immediate Intervention/Underperforming SchoolsProgram, pursuant to Article 3 of Chapter 6.1 (commencing with Section 52053) of Part 28 of the Education Code. Of this amount, $21,500,000 is for the purpose of providing planning grants of $50,000 each to a third cohort of new schools, and the remainder is provided to fully fund implementation grants for the first and second cohorts of schools that received planning grants under the program during the 1999–00 and 2000–01 fiscal years.
2. Funds appropriated in Schedule (2) are provided solely for the purpose of implementing the Governor's High Achieving/Improving Schools Program, pursuant to Article 4 of Chapter 6.1 (commencing with Section 52056) of Part 28 of the Education Code.
3. Funds appropriated in Schedule (3) are provided solely for the purpose of implementing a low–performing school program, pursuant to legislation enacted during the 2001–02 Regular Session.

SEC. 8. (a) Notwithstanding any other provision of law, funds appropriated in Schedule (3) of Item 6110-123-0001 of Section 2.00 of the Budget Act of 2001 shall be available through the 2003–04 fiscal year for implementation of the High Priority Schools Grant Program for Low Performing Schools established pursuant to Article 3.5 (commencing with Section 52055.600) of Chapter 6.1 of Part 28 of the Education Code, including providing planning grants authorized by Article 3.5 (commencing with Section 52055.600) of Chapter 6.1 of Part 28 of the Education Code and implementation grants authorized by Article 3 (commencing with Section 52053) of, and Article 3.5 (commencing with Section 52055.600) of, Chapter 6.1 of Part 28 of the Education Code for those schools participating in each of those programs.

(b) The sum of three million dollars ($3,000,000) is hereby appropriated from the General Fund to the State Department of Education in augmentation of Item 6110-001-0001 of Section 2.00 of the Budget Act of 2001 to provide training for individuals who wish to function as external evaluators pursuant to Section 52054 or as members of a school assistance and intervention team pursuant to Section 52055.51 and for costs associated with the administration and oversight of the High Priority Schools Grant Program for Low Performing Schools established pursuant to Article 3.5 (commencing with Section 52055.600) of Chapter 6.1 of Part 28 of the Education Code and the Immediate Intervention/Underperforming Schools Program established pursuant to Article 3 (commencing with Section 52053 of Part 28 of the Education Code and may be expended to fund up to 18 positions in the department.

SEC. 9. It is the intent of the Legislature to appropriate funds for purposes of this article for the 2002–03 fiscal year and for subsequent fiscal years.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

California is experiencing a crisis with respect to the learning development and achievement of millions of pupils in California's public schools, and the program proposed by this act is designed and enacted to enable these pupils to progress and to succeed, and there is no time to waste in meeting the needs of these pupils. Therefore, in order to begin implementation of the High Priority Schools Grant Program for Low Performing Schools during the 2001–02 fiscal year, it is necessary that this act take effect immediately.

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CHAPTER 750

An act to amend Sections 30.5, 8007, 8236, 8278.3, 8815, 41020.6, 49413, 51264, 52177, 52656, 54696, and 58523 of, and to repeal Sections 8280, 17213.3, 32237, 41407, 52136, and 99306 of, the Education Code, to amend Sections 11372.7 and 104450 of the Health and Safety Code, to add Section 11323.9 to the Welfare and Institutions Code, to amend Item 6110-001-890 of Section 2.00 of the Budget Act of 1991, to amend Item 6110-001-890 of Section 2.00 of the Budget Act of 1992, and to repeal Section 2 of Chapter 1047 of the Statutes of 1996, relating to the State Department of Education.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 30.5 of the Education Code is amended to read:

30.5. (a) Notwithstanding any other provision of law, bilingual education shall be defined as a system of instruction which builds upon the language skills of a pupil whose primary language is neither English nor derived from English. For purposes of this paragraph:

(1) ''Primary language'' is a language, other than English or a language derived from English, which is the language the pupil first learned.

(2) ''Derived from English'' means any dialect, idiom, or language derived from English. Both of the following shall be construed as being derived from English:

(A) Any dialect, idiom, or language that has linguistic roots connected to English.

(B) Any dialect, idiom, or language that has a syntax distinct from English, yet can be traced linguistically as derived from English.

(b) A school district shall not utilize, as part of a bilingual education program, state funds or resources for the purpose of recognition of, or instruction in, any dialect, idiom, or language derived from English, as defined in paragraph (1).

SEC. 2. Section 8007 of the Education Code is amended to read:

8007. The State Department of Education and the Board of Governors of the California Community Colleges shall submit the following reports each year to the Legislature:

(a) An annual descriptive report containing information on career technical education and technical training programs, including regional occupational centers and programs. The report shall be coordinated with federal evaluation requirements pursuant to Section 113 of Title I of the

Carl D. Perkins Vocational and Technical Education Act of 1998 (P.L. 105-332; 20 U.S.C. Sec. 2323) and shall contain all of the following:

(1) Enrollment defined in terms of secondary pupils, postsecondary students, and adults.

(2) The number of graduates of programs and students participating in career technical education.

(3) The number of pupils participating in career technical education.

(4) The number of pupils completing a specific career technical education program.

(5) The number of pupils in grade 12 that complete a career technical education program.

(6) The number of pupils in grade 12 that complete a career technical education program and earn a high school diploma.

(b) An annual individual program evaluation derived from a representative sample of participating districts and schools containing information on program effectiveness as measured by:

(1) The extent to which persons who complete the program find employment in occupations related to their training.

(2) Other factors as determined in Budget Act language pursuant to Section 33404.

(c) A copy of the annual state plan for career technical education.

SEC. 3. Section 8236 of the Education Code is amended to read:

8236. (a) For purposes of this section, the following definitions apply:

(1) ''Eligible children'' means children who are currently eligible for the state preschool program.

(2) ''Four-year-old children'' means those children who will have their fourth birthday on or before December 2 of the fiscal year in which they are enrolled in a state preschool program.

(3) ''Local educational agency'' means a school district, a county office of education, a community college district, or a school district on behalf of one or more schools within the school district.

(4) ''Superintendent'' means the Superintendent of Public Instruction.

(5) ''Three-year-old children'' means those children who will have their third birthday on or before December 2 of the fiscal year in which they are enrolled in a state preschool program.

(b) (1) Each applicant or contracting agency funded pursuant to Section 8235 shall give first priority to neglected or abused children who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a legal, medical, or social service agency. If an agency is unable to enroll a child in this first priority category, the agency shall refer the child's parent or

guardian to local resource and referral services so that services for the child can be located.

(2) After children in the first priority category set forth in paragraph (1) are served, each agency funded pursuant to Section 8235 shall serve eligible four-year-old children prior to serving eligible three-year-old children. Each agency shall certify to the superintendent that enrollment priority is being given to eligible four-year-old children.

(c) For state preschool programs operating with funding that was initially allocated in a prior fiscal year, at least half the children enrolled at a preschool site shall be four-year-olds. Any exception to this requirement shall be approved by the superintendent. The superintendent shall inform the Secretary of Child Development and Education of any exceptions that have been granted.

(d) The following provisions apply to the award of any new funding for the expansion of the state preschool program that is appropriated by the Legislature for that purpose in any fiscal year:

(1) In an application for those expansion funds, an agency shall furnish the superintendent with an estimate of the number of four-year-old and three-year-old children that it plans to serve in the following fiscal year with those expansion funds. The agency also shall furnish documentation that indicates the basis of those estimates.

(2) In awarding contracts for expansion pursuant to this subdivision, the superintendent, after taking into account the geographic criteria established pursuant to Section 8289, and the headquarters preferences and eligibility criteria relating to fiscal or programmatic noncompliance established pursuant to Section 8261, shall give priority to applicant agencies that, in expending the expansion funds, will be serving the highest percentage of four-year-old children.

(3) (A) Agencies that receive funding for the expansion of a state preschool program shall enroll children in the following priority order:

(i) Neglected or abused children who are recipients of child protective services, or recipients who are at risk of being neglected or abused, upon written referral from a legal, medical, or social services agency.

(ii) Four-year-old children who are eligible for the state preschool program.

(B) Otherwise, children shall be enrolled based on other statutory and regulatory priorities for the state preschool program.

(e) Nothing in this section shall be deemed to preclude a local educational agency from subcontracting with an appropriate public or private agency to operate a state preschool program and to apply for funds made available for the purposes of this section. If a school district chooses not to operate or subcontract for a state preschool program, the superintendent shall work with the county office of education and other

eligible agencies to explore possible opportunities in contracting or alternative subcontracting to provide a state preschool program.

(f) Nothing in this section shall prevent eligible children who are currently receiving services from continuing to receive those services in future years pursuant to this chapter.

SEC. 4. Section 8278.3 of the Education Code is amended to read:

8278.3. (a) (1) The Child Care Facilities Revolving Fund is hereby established in the State Treasury to provide funding for the renovation, repair, or improvement of an existing building to make the building suitable for licensure for child care and development services and for the purchase of new relocatable child care facilities for lease to school districts and contracting agencies who provide child care and development services, pursuant to this chapter. The Superintendent of Public Instruction may transfer state funds appropriated for child care facilities into this fund for allocation to school districts and contracting agencies, as specified, for the purchase, transportation, and installation of facilities for replacement and expansion of capacity. School districts and contracting agencies using facilities made available by the use of these funds shall be charged a leasing fee, either at a fair market value for those facilities or at an amount sufficient to amortize the cost of purchase and relocation, whichever is lower, over a 10-year period. Upon full repayment of the purchase and relocation costs, title shall transfer from the State of California to the school district or contracting agency. The Superintendent of Public Instruction shall deposit all revenue derived from the lease payments into the Child Care Facilities Revolving Fund.

(2) Notwithstanding Section 13340 of the Government Code, all moneys in the fund, including moneys deposited from lease payments, shall be continuously appropriated, without regard to fiscal year, to the Superintendent of Public Instruction for expenditure pursuant to this article.

(b) On or before August 1, 1998, and on or before August 1 of each fiscal year thereafter, the Superintendent of Public Instruction shall submit to the Office of the Secretary for Education, the Department of Finance, and the Legislative Analyst's Office a report detailing the number of funding requests received and their purpose, the types of agencies which received this facilities funding, the increased capacity that these facilities generated, a description of how the facilities are being used, and a projection of the lease payments collected and the funds available for future use.

SEC. 5. Section 8280 of the Education Code is repealed.

SEC. 6. Section 8815 of the Education Code is amended to read:

8815. The State Department of Education shall do all of the following:

(a) Develop plan guidelines in consultation with the California Arts Council.

(b) Utilize not more than seven percent of total program funds for the administrative costs of implementing this chapter.

(c) Send one copy of plan guidelines and necessary application forms, including the budget form developed pursuant to subdivision (b) of Section 8813 to each school district and county office of education, together with a list of appropriate local arts agencies.

(d) Contract with local education agencies to implement programs pursuant to this chapter.

SEC. 7. Section 17213.3 of the Education Code is repealed.

SEC. 8. Section 32237 of the Education Code is repealed.

SEC. 9. Section 41020.6 of the Education Code is amended to read:

41020.6. On October 1, 2001, and each year thereafter, the State Department of Education shall report to the Joint Legislative Audit Committee on the actions taken by the department to eliminate audit exceptions and comply with management improvement recommendations.

SEC. 10. Section 41407 of the Education Code is repealed.

SEC. 11. Section 49413 of the Education Code is amended to read:

49413. (a) The Legislature recognizes the importance of first aid and cardiopulmonary resuscitation training. In enacting this section, it is the intent of the Legislature to encourage school districts and schools, individually or jointly, to develop a program whereby their staff and pupils understand the importance of this training and have an appropriate opportunity to develop these skills.

(b) A school district or school, individually or jointly with another school district or school, may provide a comprehensive program in first aid or cardiopulmonary resuscitation (CPR) training, or both, to pupils and employees. The program shall be developed using the following guidelines:

(1) The school district or school collaborates with existing local resources, including, but not limited to, parent teacher associations, hospitals, school nurses, fire departments, and other local agencies that promote safety, to make first aid or CPR training, or both, available to the pupils and employees of the school district or school.

(2) Each school district that develops a program, or the school district that has jurisdiction over a school that develops a program, compiles a list of resources for first aid or CPR information, to be distributed to all of the schools in the district.

(3) The first aid and CPR training are based on standards that are at least equivalent to the standards currently used by the American Red Cross or the American Heart Association.

SEC. 12. Section 51264 of the Education Code is amended to read:

51264. (a) The State Department of Education shall prepare and distribute to school districts and county offices of education guidelines for incorporating in-service training in gang violence and drug and alcohol abuse prevention for teachers, counselors, athletic directors, school board members, and other educational personnel into the staff development plans of all school districts and county offices of education.

(b) The department shall, upon request, assist school districts and county offices of education in developing comprehensive gang violence and drug and alcohol abuse prevention in-service training programs. The department's information and guidelines, to the maximum extent possible, shall encourage school districts and county offices of education to avoid duplication of effort by sharing resources, adapting or adopting model in-service training programs, developing joint and collaborative programs, and coordinating efforts with existing state staff development programs, county gang violence and drug and alcohol staff development programs, county health departments, county and city law enforcement agencies, and other public and private agencies providing health, drug, alcohol, gang violence prevention, or other related services at the local level.

(c) The department shall assist school districts and county offices of education in qualifying for the receipt of federal and state funds to support their gang violence and drug and alcohol abuse prevention in-service training programs.

(d) Each school that chooses to utilize the provisions of this article related to in-service training in gang violence and drug and alcohol abuse prevention, is encouraged to develop a single plan to strengthen its gang violence and drug and alcohol abuse prevention efforts. If a school develops or has developed a school improvement plan pursuant to Article 2 (commencing with Section 52010) of Chapter 6 of Part 28, or a school safety plan pursuant to Article 10.3 (commencing with Section 35294) of Chapter 2 of Part 21, it is encouraged to incorporate into that plan, where appropriate, the gang violence and drug and alcohol prevention plan that it has developed.

(e) The department shall consult with the Office of Criminal Justice Planning regarding gang violence.

SEC. 13. Section 52136 of the Education Code is repealed.

SEC. 14. Section 52177 of the Education Code is amended to read:

52177. Out of funds appropriated for these purposes, the superintendent shall administer this article. The responsibilities of the superintendent in administering this article shall include, but are not limited to, ensuring all of the following:

(a) Sufficient bilingual personnel are available within the department with familiarity, competency, and proficiency in bilingual-crosscultural instruction to meet the needs of this article and to administer, review,

monitor, and evaluate the use of state or federal categorical aid funds allocated to local districts which have been wholly or partially allocated on the basis of the educational needs of pupils of limited-English proficiency.

(b) Department personnel responsible for the administration, review, monitoring, or evaluation of programs operating pursuant to this article have been sufficiently trained to carry out the intent of this article to meet the needs of the pupil of limited-English proficiency.

(c) There is within the department an administrative unit responsible for bilingual-bicultural educational programs and policies through which the superintendent shall carry out his or her functions pursuant to this article.

(d) Districts are providing each pupil of limited-English proficiency with an educational opportunity equal to that available to English-speaking pupils; they are making appropriate use of local and state general funds to provide bilingual-crosscultural teachers and other required services; and an annual report is made to the Legislature regarding the extent to which this article has been implemented by school districts throughout the state. All districts in which pupils of limited-English proficiency are enrolled shall be reviewed through an onsite technical assistance, monitoring, and enforcement process at least once every three years.

SEC. 15. Section 52656 of the Education Code is amended to read:

52656. (a) Notwithstanding any other provision of law, school districts that received apportionment for extraordinary needs in English as a second language and basic skills from Provision (4) of Schedule (a) of Item 6110-156-001 of the Budget Act of 1991 for the 1991–92 fiscal year shall continue to receive those funds in the school district's adult block entitlement in the 1992–93 fiscal year, and each fiscal year thereafter.

(b) Commencing in the 1993–94 fiscal year, school districts that receive an apportionment from subdivision (a) shall give priority to eligible immigrants in need of courses pursuant to paragraphs (2), (3), and (4) of subdivision (a) of Section 41976 and Section 52653 of the Education Code.

(c) School districts are not restricted by this chapter from providing classes for immigrants pursuant to paragraph (4) of subdivision (a) of Section 41976 of the Education Code with other funds for adult education that are available to the district.

SEC. 16. Section 54696 of the Education Code is amended to read:

54696. The Legislature finds that each new academy requires technical assistance for the academy team, administrators, teachers, and private sector participants in the multiple aspects of the academy program that differ from the standard high school program. To provide

for the transfer of the experiences gained in the operation of currently successful academies to new academies, the Superintendent of Public Instruction shall develop a technical assistance team whose members have prior involvement in successful academy operation and make their expertise available, as necessary, to each new academy during its first two years of operation.

SEC. 17. Section 58523 of the Education Code is amended to read:

58523. The governing board of a school district receiving a grant pursuant to this chapter shall establish a single gender academy as a magnet school pursuant to its general power established under Section 35160 or as an alternative education magnet school pursuant to Chapter 3 (commencing with Section 58500).

SEC. 18. Section 99306 of the Education Code is repealed.

SEC. 19. Section 11372.7 of the Health and Safety Code is amended to read:

11372.7. (a) Except as otherwise provided in subdivision (b) or (e), each person who is convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred fifty dollars ($150) for each separate offense. The court shall increase the total fine, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law.

(b) The court shall determine whether or not the person who is convicted of a violation of this chapter has the ability to pay a drug program fee. If the court determines that the person has the ability to pay, the court may set the amount to be paid and order the person to pay that sum to the county in a manner that the court believes is reasonable and compatible with the person's financial ability. In its determination of whether a person has the ability to pay, the court shall take into account the amount of any fine imposed upon that person and any amount that person has been ordered to pay in restitution. If the court determines that the person does not have the ability to pay a drug program fee, the person shall not be required to pay a drug program fee.

(c) The county treasurer shall maintain a drug program fund. For every drug program fee assessed and collected pursuant to subdivisions (a) and (b), an amount equal to this assessment shall be deposited into the fund for every conviction pursuant to this chapter, in addition to fines, forfeitures, and other moneys which are transmitted by the courts to the county treasurer pursuant to Sections 11372.5 and 11502. These deposits shall be made prior to any transfer pursuant to Section 11502. Amounts deposited in the drug program fund shall be allocated by the administrator of the county's drug program to drug abuse programs in the schools and the community, subject to the approval of the board of supervisors, as follows:

(1) The moneys in the fund shall be allocated through the planning process established pursuant to Sections 11983, 11983.1, 11983.2, and 11983.3.

(2) A minimum of 33 percent of the fund shall be allocated to primary prevention programs in the schools and the community. Primary prevention programs developed and implemented under this article shall emphasize cooperation in planning and program implementation among schools and community drug abuse agencies, and shall demonstrate coordination through an interagency agreement among county offices of education, school district, and the county drug program administrator. These primary prevention programs may include:

(A) School- and classroom-oriented programs, including, but not limited to, programs designed to encourage sound decisionmaking, an awareness of values, an awareness of drugs and their effects, enhanced self-esteem, social and practical skills that will assist students toward maturity, enhanced or improved school climate and relationships among all school personnel and students, and furtherance of cooperative efforts of school- and community-based personnel.

(B) School- or community-based nonclassroom alternative programs, or both, including, but not limited to, positive peer group programs, programs involving youth and adults in constructive activities designed as alternatives to drug use, and programs for special target groups, such as women, ethnic minorities, and other high-risk, high-need populations.

(C) Family-oriented programs, including, but not limited to, programs aimed at improving family relationships and involving parents constructively in the education and nurturing of their children, as well as in specific activities aimed at preventing drug abuse.

(d) Moneys deposited into a county drug program fund pursuant to this section shall supplement, and shall not supplant, any local funds made available to support the county's drug abuse prevention and treatment efforts.

(e) This section shall not apply to any person convicted of a violation of subdivision (b) of Section 11357 of the Health and Safety Code.

SEC. 20. Section 104450 of the Health and Safety Code is amended to read:

104450. (a) The State Department of Education shall develop a common reporting format for districts receiving tobacco-use-prevention funds under this article.

(b) The format required by subdivision (a) shall be designed to provide annual data on all of the following:

(1) Tobacco-use-prevention education program expenditures.

(2) Tobacco-use-prevention education program instructional and other services to targeted and general student populations.

(3) Tobacco-use-prevention education program staff development and parent training.

(4) Other information determined to be appropriate by the department.

(c) The information provided by the format required by subdivision (a) shall be in a quantitative format that describes the number of individuals who are served and the number of individuals receiving each type of service.

(d) In addition to the requirements of subdivision (c), the information to be provided by the format required by subdivision (a) shall include, at a minimum, all of the following:

(1) (A) The number of students receiving tobacco-use-prevention instruction and the type of curriculum used.

(B) The format required by subdivision (a) shall show, by category, those students listed for the purpose of subparagraph (A), in each target group listed in Section 104360.

(2) Other programmatic activities directly targeted to students, and the number of students participating in each.

(3) The types of staff development or other tobacco-use-prevention training and, by staff classification, the number of staff members receiving the training.

(4) The number of parents receiving training and the types of training provided.

(5) The types of programs geared toward community involvement and the number of people served by each type.

(6) The types of services provided to target populations that are in addition to services provided to other students.

(7) The number and size of schools that are tobacco-free.

(8) The ways in which money appropriated for the purpose of this article has been spent, including the following categories: salaries, including, but limited to, personnel, and substitute teacher costs; benefits; travel; consultant services; operating expenses, including, but not limited to, curriculum and instructional materials, supplies, other; capital outlay; and indirect costs.

(e) (1) Each county office of education shall provide to the State Department of Education an annual report on district expenditures and services within its respective county pursuant to the common reporting format developed by the State Department of Education.

(2) The county shall provide an annual report of the information required in paragraph (8) of subdivision (d).

SEC. 21. Section 11323.9 is added to the Welfare and Institutions Code, to read:

11323.9. Each county welfare department shall provide to the State Department of Social Services, on a monthly basis, data regarding child

care usage and demand in stage one of child care services, as described in Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code, through which a recipient of aid under this chapter, or any successor program, will pass. The specific information needed for these reports may be specified by the Department of Social Services or through provisions of the annual Budget Act.

SEC. 22. Item 6110-001-890 of Section 2.00 of the Budget Act of 1991 is amended to read:

6110–001–890—For support of Department of Education, for payment to Item 6110–001–001, payable from the Federal Trust Fund . . . . . 49,323,000

Provisions:

1. The funds appropriated in this item include 1991–92 Federal Vocational Education Act funds to be transferred to the community colleges by means of interagency agreements. These funds shall be used by the community colleges for the administration of vocational education programs.
2. Of the funds appropriated in this item, $47,500 is available to the Advisory Commission on Special Education for the in–state travel expenses of the commissioners and the secretary to the commission.
3. Of the funds appropriated in this item, $470,000 is available for programs for homeless youth and adults pursuant to the federal Stewart B. McKinney Act. The department shall participate on the Health and Welfare Agency Homeless Task Force and shall consult with the Departments of Economic Opportunity, Mental Health, Housing and Community Development, and Economic Development in operating this program.
4. Of the funds appropriated in this item, $200,000 shall be for the New Chance Demonstration Program, established pursuant to Chapter 931, Statutes of 1989.

6. Of the funds appropriated in this item, $364,000 shall be used to provide in–service training for teachers of the severely handicapped. These funds are also to provide four positions for this purpose.
7. Of the funds appropriated in this item, $500,000 shall be used to provide training, technical assistance, and resources to educational personnel, care providers, families, and others who work with individuals with dual sensory impairments. These funds are also to provide 5.5 positions for this purpose.
8. Of the funds appropriated in this item, $318,000 shall be used to provide training in culturally nonbiased assessment and specialized language skills to special education teachers through Second Language Immersion Institutes.
9. Of the funds appropriated in this item, $150,000 shall be used to contract for the analysis of special education student level data and to establish a format to be used for ongoing analysis of this data.
10. Of the funds appropriated in this item, from the amount of federal Adult Basic Education (PL 100–297) funds designated for state operations, the Department of Education is authorized to add one consultant and one half support positions to provide oversight, coordination, quality control and accountability of education programs for adults in correctional facilities, pursuant to Section 41841.5 of the Education Code. The Department of Education shall use these positions to study and identify the factors that have led to a rapid growth in ADA generated by adult education provided in correctional facilities.

SEC. 23. Item 6110-001-890 of Section 2.00 of the Budget Act of 1992 is amended to read:

6110–001–890—For support of Department of Education, for payment to Item 6110–001–001, payable from the Federal Trust Fund . . . . . 60,252,000
Provisions:

1. The funds appropriated to this item include 1992–93 Federal Vocational Education Act funds to be transferred to the community colleges by means of interagency agreements. These funds shall be used by the community colleges for the administration of vocational education programs.
2. Of the funds appropriated in this item, $47,500 is available to the Advisory Commission on Special Education for the in–state travel expenses of the commissioners and the secretary to the commission.
3. Of the funds appropriated in this item, $449,000 is available for programs for homeless youth and adults pursuant to the federal Stewart B. McKinney Act. The department shall participate on the Health and Welfare Agency Homeless Task Force and shall consult with the Departments of Economic Opportunity, Mental Health, Housing and Community Development, and Economic Development in operating this program.
4. Of the funds appropriated in this item, $200,000 shall be for the New Chance Demonstration Program, established pursuant to Chapter 931, Statutes of 1989.
6. Of the funds appropriated in this item, $364,000 shall be used to provide in–service training for teachers of the severely handicapped. These funds are also to provide four positions for this purpose.
7. Of the funds appropriated in this item, $500,000 shall be used to provide training, technical assistance, and resources to educational personnel, care providers, families, and others who work with individuals with dual sensory impairments. These funds are also to provide 5.5 positions for this purpose.
8. Of the funds appropriated in this item, $318,000 shall be used to provide training in culturally nonbiased assessment and specialized language skills to special education teachers through Second Language Immersion Institutes.

9. Of the funds appropriated in this item, $150,000 shall be used to contract for the analysis of special education student level data and to establish a format to be used for ongoing analysis of this data.
10. Of the funds appropriated in this item, from the amount of federal Adult Basic Education (PL 100–297) funds designated for state operations, the Department of Education is authorized to continue to fund one consultant and one–half support positions to provide oversight, coordination, quality control and accountability of education programs for adults in correctional facilities, pursuant to Section 41841.5 of the Education Code. The Department of Education shall use these positions to study and identify the factors that have led to a rapid growth in ADA generated by adult education provided in correctional facilities.

SEC. 24. Section 2 of Chapter 1047 of the Statutes of 1996 is repealed.

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## CHAPTER 751

An act to amend Section 120480 of the Health and Safety Code, relating to disease prevention, and making an appropriation therefor.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 120480 of the Health and Safety Code is amended to read:

120480. (a) Funds appropriated in the Budget Act of 1998, and any other appropriations, to the State Department of Health Services for the purpose of valley fever (coccidioidomycosis) vaccine research shall be used to continue and expand the current research effort being conducted by the Valley Fever Vaccine Project.

(b) The department shall augment and amend the existing contract to support research into the development of a vaccine to protect against valley fever. The department may contract on a sole source basis with a nonprofit organization that has provided funding for vaccine research on

valley fever. The contract shall require the organization to distribute research grants to support research efforts that are likely to advance the effort to develop a vaccine. This contract shall not be subject to review by the Department of General Services.

(c) The contractor shall establish an advisory group consisting of persons with relevant expertise in the fields of mycology and vaccine development and a representative from the department. The advisory group shall approve grants for those whose research is likely to advance the effort to develop a safe and effective vaccine. The contractor shall seek advice from the appropriate agencies in the National Institutes of Health and other federal agencies with experience in supporting vaccine research when reviewing the research of those receiving funds under this section. Funding awards shall be made so as to complement financial support provided by the federal government.

(d) The contractor shall provide the department with periodic status reports on the progress of the researchers receiving funds pursuant to this section. The department shall review progress reports from the contractor describing the research progress and plans for future funding and report to the Legislature during the annual review of the budget.

(e) The contract shall require that funding is provided on the condition that, if a valley fever vaccine is developed and successfully marketed, the state shall be reimbursed for the cost of grants made under this section in proportion to the state's contribution to the research and development effort.

SEC. 1.5. Section 120480 of the Health and Safety Code is amended to read:

120480. (a) Funds appropriated in the Budget Act of 1998, and any other appropriations, to the State Department of Health Services for the purpose of valley fever (coccidioidomycosis) vaccine research shall be used to continue and expand the current research effort being conducted by the Valley Fever Vaccine Project.

(b) The department shall augment and amend the existing contract to support research into the development of a vaccine to protect against valley fever. The department may contract on a sole source basis with a nonprofit organization that has provided funding for vaccine research on valley fever. The contract shall require the organization to distribute research grants to support research efforts that are likely to advance the effort to develop a vaccine. This contract shall not be subject to review by the Department of General Services.

(c) The contractor shall establish an advisory group consisting of persons with relevant expertise in the fields of mycology and vaccine development and a representative from the department. The advisory group shall approve grants for those whose research is likely to advance the effort to develop a safe and effective vaccine. The contractor shall

seek advice from the appropriate agencies in the National Institutes of Health and other federal agencies with experience in supporting vaccine research when reviewing the research of those receiving funds under this section. Funding awards shall be made so as to complement financial support provided by the federal government.

(d) The contractor shall provide the department with periodic status reports on the progress of the researchers receiving funds pursuant to this section. The department shall review progress reports from the contractor describing the research progress and plans for future funding.

(e) The contract shall require that funding is provided on the condition that, if a valley fever vaccine is developed and successfully marketed, the state shall be reimbursed for the cost of grants made under this section in proportion to the state's contribution to the research and development effort.

SEC. 2. The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the General Fund to the State Department of Health Services, for the 2001–02 fiscal year, for purposes of valley fever vaccine research pursuant to Section 120480 of the Health and Safety Code. Fifty thousand dollars ($50,000) shall be allocated to the department in the 2001–02 fiscal year for purposes of costs associated with the administration of Section 120480 of the Health and Safety Code.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 120480 of the Health and Safety Code proposed by both this bill and SB 1191. 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 120480 of the Health and Safety Code, and (3) this bill is enacted after SB 1191, in which case Section 120480 of the Health and Safety Code, as amended by SB 1191, 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.

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## CHAPTER 752

An act to add Sections 15333.6, 15333.7, and 15333.8 to, and to repeal Sections 15333.3 and 15333.4 of, the Government Code, relating to economic development, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 15333.3 of the Government Code is repealed.

SEC. 2. Section 15333.4 of the Government Code is repealed.

SEC. 3. Section 15333.6 is added to the Government Code, to read:

15333.6. (a) Subject to the availability of funds appropriated for that purpose, the Technology, Trade, and Commerce Agency shall implement a space industry development program to foster activities that increase the competitiveness of the industry in California, including, but not limited to, the commercial use of space, space vehicle launches, space launch infrastructure, manufacturing, applied research, technology development, economic diversification, and business development.

(b) The agency may contract with other state or private agencies, nonprofit corporations, universities, firms, or individuals for the performance of technical or specialized work, or for services related to space industry development programs.

(c) The Secretary of the Technology, Trade, and Commerce Agency shall select a California nonprofit corporation to assist the agency in its administration of space industry-related economic development activities through programs, projects, grants, partnerships, networks, and collaboration. The corporation shall be selected through a solicitation process established by the agency. The solicitation process shall include criteria for selection of the corporation, which shall include, but not be limited to, demonstrated experience in the space industry and the ability to perform the space industry development activities described in subdivision (d).

(d) The corporation may perform one or more of the following activities, as determined contractually between the agency and the corporation:

(1) Serve as the California Spaceport Authority with responsibilities specified in Section 15348.5.

(2) Pursue grants from the federal government or from private businesses, foundations, or individuals, for California space industry activities, including, but not limited to, studies, services, infrastructure improvements and modernization, and defense transition programs, to the extent permitted by law.

(3) Identify science and technology trends that are significant to the space industry and the state and act as a clearinghouse for space industry-related issues and information.

(4) Develop and implement a state strategy for applying and commercializing technology to create jobs, respond to industry changes, and foster innovation and competitiveness in the space industry.

(5) Provide information to the secretary relevant to changes in federal, state, and local statutes and regulations that will enhance the development of the California space industry.

(6) Provide information to the secretary, regarding the development of laws, regulations, decisions, or determinations affecting the economic and employment impacts of the California space industry.

(7) Provide recommendations to the secretary for appropriate state funding mechanisms and amounts to promote development of the California space industry, including education and workforce development.

(8) Provide recommendations to the secretary in the form of strategic planning documents.

(9) Review applications for, and promote, the California Space Industry Competitive Grant Program established by Section 15333.7.

(e) (1) The agency and the corporation shall enter into an annual contract specifying the activities to be performed by the corporation.

(2) Pursuant to the contract, the corporation shall submit to the agency quarterly reports of its activities and finances. The quarterly reports shall be of sufficient detail for the agency to determine whether the corporation is in compliance with the annual contract between the agency and the corporation.

(3) The annual contract shall include conflict of interest requirements developed by the agency.

(4) Failure of the corporation to comply with the conditions in the annual contract, as evidenced in the quarterly reports and any supplemental monitoring of the corporation by the agency, shall result in the cancellation of the annual contract and deselection of the corporation. Upon the deselection of the corporation, the agency shall utilize the solicitation process set forth in subdivision (c) to select a replacement corporation.

SEC. 4. Section 15333.7 is added to the Government Code, to read:

15333.7. (a) The California Space Industry Competitive Grant Program is hereby established within the Technology, Trade, and Commerce Agency, to provide funding, upon appropriation by the Legislature, for the development of the California space industry. For purposes of this section, space industry activities shall include, but are not limited to, the commercial use of space, space vehicle launches, space launch infrastructure, manufacturing, applied research, technology development, economic diversification, and business development. Entities conducting activities in California intended to improve the competitiveness of the California space industry, including public, private, educational, commercial, nonprofit, or for-profit entities may apply for grants.

(b) (1) If program funding is appropriated by the Legislature, the corporation selected pursuant to subdivision (c) of Section 15333.6 shall, at least annually, issue solicitations. No solicitation shall be issued without the prior review and approval by the agency. If the corporation has not issued a solicitation within 180 days of the appropriation of funds, the agency shall issue the solicitation.

(2) Solicitations developed by the corporation shall include minimum eligibility and requirements. Additional requirements may be added to each year's grant solicitation. The solicitation shall address at least all of the following:

(A) Jobs created and retained by the implementation of the project.

(B) Cost sharing by other project participants, which should include at least one of the following:

(i) A private sector company or companies.

(ii) One or more foundations, industry associations, or nonprofit cooperative associations, or any combination thereof.

(iii) In-kind support, which may include staff and facilities.

(iv) Federal or local government funding.

(C) A condition that grant funds will not be used to supplant other project funds.

(D) A demonstration that a majority of the project will be undertaken in California.

(E) An agreement among all project participants as to intellectual property rights relative to the project.

(F) The potential impact on the state's economy.

(G) The cost-effectiveness of the project.

(H) The importance of state funding for the viability of the project.

(I) A demonstration of technical feasibility and an assessment of programmatic risk.

(c) In evaluating grant proposals, the corporation shall establish an impartial review panel composed of technical and scientific experts and government representatives to review grant applications. The panel shall be composed of members from throughout the state who are knowledgeable about activities related to the space industry. No more than 30 percent of the panel members shall be government representatives, and all other members shall either be actively involved in, or be technical and scientific experts in activities related to, the space industry. No more than 30 percent of the panel members shall be members of, or on the board of directors of, the corporation.

(d) (1) The review panel shall review all applications received by the deadline specified in the solicitation in order to determine the applications that are complete and that meet the criteria set forth in the solicitation. The review panel may rely on experts who are not part of the panel in order to determine compliance with one or more criteria.

(2) All applications meeting the criteria set forth in paragraph (1) shall be submitted to the agency.

(3) The agency may remove one or more applications from those submitted by the review panel upon a determination that the application did not meet the criteria set forth in paragraph (1). The agency shall rank the grant applications received from the review panel, minus any applications removed by the agency because of failure to meet the criteria. The ranking shall be based upon criteria stated in the solicitation. The ranking shall include recommendations as to the amount of state funding for each grant application.

(e) The secretary shall award program grants based upon the criteria set forth in paragraph (1) of subdivision (d) and recommendations of the committee established in Section 15333.8.

(f) The funding determination shall be transmitted to the Governor and the chairpersons of the Senate and Assembly fiscal committees and shall be subject to the availability of funds appropriated for that purpose.

(g) The solicitation process set forth in this section shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1.

(h) The Legislature hereby finds and declares that the granting of funds to private entities serves a public purpose by assisting an industry vital to the health and welfare of the State of California.

SEC. 5. Section 15333.8 is added to the Government Code, to read:

15333.8. (a) The California Space Industry Advisory Committee is hereby established in the Technology, Trade, and Commerce Agency. The committee shall consist of nine members. The Speaker of the Assembly and the Senate Committee on Rules shall each appoint two members. The Governor shall appoint the remaining members of the committee upon nomination by the Secretary of the Technology, Trade, and Commerce Agency, and shall appoint one member as chair. All members of the committee shall be California residents. One-third of the members shall be residents of northern California, one-third of the members shall be residents of southern California, and one-third of the members shall be residents of central California. A majority of the members of the committee shall be from the California space industry. The committee may include representatives from labor, local government, and special districts, public and private institutions of higher learning, and federal laboratories located in the State of California. One of the initial appointments by the Speaker of the Assembly, one by the Senate Committee on Rules, and two by the Governor shall be for a term of two years. The remaining initial appointments, and all subsequent appointments, shall be for a term of four years.

(b) Each committee member shall serve without compensation but may be reimbursed for actual and necessary travel and

telecommunication expenses incurred when attending committee meetings.

(c) The committee shall advise the agency regarding both of the following:

(1) Provide input, evaluation, program funding recommendations, and other recommendations on the California Space Industry Competitive Grant Program established by Section 15333.7.

(2) Provide recommendations on space industry issues, as requested by the secretary.

(d) Staff for the committee shall be supplied by the agency, and records of the committee shall be maintained by the agency.

(e) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2). However, the Legislature finds and declares that it is important that committee members are active in the space industry, and it is expected that several of the committee members may also be members of other organizations.

(f) This section shall only be implemented to the extent funds are appropriated for that purpose.

SEC. 6. The Technology, Trade, and Commerce Agency may adopt emergency regulations to implement this act. 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, and general welfare for purposes of Section 11349.6 of the Government Code. Notwithstanding subdivision (c) of Section 11346.1 of the Government Code, an emergency regulation adopted pursuant to this section shall be repealed 180 days after the effective date of the regulation, unless the department acts to make the regulation permanent pursuant to subdivision (e) of Section 11346.1 of the Government Code.

SEC. 7. Funding for the purposes described in Sections 15333.6, 15333.7, and 15333.8 of the Government Code, as added by this act, shall be contingent upon funding in the annual Budget Act.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the state may take all necessary steps to protect and expand the vital California space industry at the earliest possible time, it is necessary that this act take effect immediately.

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# CHAPTER 753

An act to amend Sections 1053, 2859, 2861, 5521.5, 6430, 6453, 6455, 7149.4, 7149.45, 7361, 7362, 7363, 7852.3, 7860, 7881, 8053, 8405.4, 8552.6, 8601.5, 9001.5, 9001.6, 12002.8, and 12006.6 of, to amend and repeal Section 7149 of, to add Sections 1050.6 and 9001.8 to, and to repeal Section 1000.5 of, the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 1000.5 of the Fish and Game Code is repealed.

SEC. 1.5. Section 1050.6 is added to the Fish and Game Code, to read:

1050.6. (a) Except as otherwise provided in this section, the names and addresses contained in records submitted and retained by the department for the purpose of obtaining recreational fishing and hunting licenses are confidential and are not public records.

(b) Notwithstanding any other provision of law, the department may release the confidential information described in subdivision (a) under the following circumstances:

(1) To an agent or authorized family member of the person to whom the information pertains.

(2) To an officer or employee of another governmental agency when necessary for the performance of his or her official duties.

(3) In accordance with Section 391.

(4) Pursuant to a court order.

SEC. 2. Section 1053 of the Fish and Game Code, as added by Chapter 112 of the Statutes of 2001, is amended to read:

1053. No person shall obtain more than one license, permit, reservation, or other entitlement of the same class, or more than the number of tags authorized by statute or regulation for the same license year, except under one of the following conditions:

(a) Licenses issued pursuant to paragraphs (3) and (4) of subdivision (a) of Section 7149 and subdivision (c) of Section 7149, paragraphs (3) and (4) of subdivision (a) of Section 7149.05 and subdivision (c) of Section 7149.05, and paragraphs (4) and (5) of subdivision (a) of Section 3031.

(b) The loss or destruction of an unexpired license, tag, permit, reservation, or other entitlement as certified by the applicant's signed affidavit and proof, as determined by the department, that the original license, tag, permit, reservation, or other entitlement was issued, and

payment of a base fee of five dollars ($5), adjusted pursuant to Section 713, not to exceed the fee for the original entitlement.

(c) The adjustment of the base fee pursuant to Section 713 applies to the hunting license years commencing on or after July 1, 1996, and the fishing license years commencing on or after January 1, 1996.

SEC. 3. Section 2859 of the Fish and Game Code is amended to read:

2859. (a) On or before January 1, 2003, the department shall submit to the commission a draft of the master plan prepared pursuant to this chapter.

(b) On or before April 1, 2003, after public review, not less than three public meetings, and appropriate modifications of the draft plan, the department shall submit a proposed final master plan to the commission. On or before December 1, 2003, the commission shall adopt a final master plan and a Marine Life Protection Program with regulations based on the plan and shall implement the program, to the extent funds are available. The commission's adoption of the plan and a program based on the plan shall not trigger an additional review under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(c) The commission shall hold at least two public hearings on the master plan and the Marine Life Protection Program prior to adopting the plan and program. The commission may adopt the plan and the program immediately following the second public hearing or at any duly noticed subsequent meeting.

(d) Upon the commission's adoption of the program, the commission shall submit the master plan and program description, including marine life reserve and other MPA designations, to the Joint Committee on Fisheries and Aquaculture for review and comment. Upon receipt of the plan, the joint committee shall have 60 days to review the plan and to submit written recommendations to the commission regarding the plan and program. The joint committee shall only submit a recommendation to the commission if a majority of the members agree to that recommendation. The commission shall consider all recommendations submitted by the joint committee, and may amend the program to incorporate the recommendations. If the commission does not incorporate any recommendations submitted by the joint committee, the commission shall set forth, in writing, its reasons for not incorporating that recommendation.

SEC. 4. Section 2861 of the Fish and Game Code is amended to read:

2861. (a) The commission shall, annually until the master plan is adopted and thereafter at least every three years, receive, consider, and promptly act upon petitions from any interested party, to add, delete, or

modify MPAs, favoring those petitions that are compatible with the goals and guidelines of this chapter.

(b) Prior to the adoption of a new MPA or the modification of an existing MPA that would make inoperative a statute, the commission shall provide a copy of the proposed MPA to the Legislature for review by the Joint Committee on Fisheries and Aquaculture or, if there is no such committee, to the appropriate policy committee in each house of the Legislature.

(c) Nothing in this chapter restricts any existing authority of the department or the commission to make changes to improve the management or design of existing MPAs or designate new MPAs prior to the completion of the master plan. The commission may abbreviate the master plan process to account for equivalent activities that have taken place before enactment of this chapter, providing that those activities are consistent with this chapter.

SEC. 5. Section 5521.5 of the Fish and Game Code is amended to read:

5521.5. (a) In addition to the moratorium imposed by Section 5521, and notwithstanding any other provision of law, it is unlawful to take abalone for commercial purposes in District 6, 7, 16, 17, or 19A, in District 10 north of Point Lobos, or in District 20 between Southeast Rock and the extreme westerly end of Santa Catalina Island.

(b) There shall be a rebuttable presumption, affecting the burden of producing evidence, that a person who is required to obtain a license pursuant to Section 7145 and who takes or possesses more than 12 individual abalone or takes abalone in excess of the annual bag limit possesses the abalone for commercial purposes.

SEC. 6. Section 6430 of the Fish and Game Code is amended to read:

6430. The Legislature finds and hereby declares that the state's sport and commercial fisheries are resources of great economic and recreational importance. These resources are threatened by the introduction of aquatic organisms from foreign ports brought in by means of the ballast water of freighters and tankers. Several planktonic and benthic organisms, at least one of which is associated with the decline of an important striped bass food organism in the Sacramento-San Joaquin Estuary, have been introduced into the waters of the state with negative consequences. The introduction of eastern cordgrass into Humboldt Bay and many estuaries along the Pacific Coast has created a variety of problems. The introduction of harmful, nonindigenous organisms is occurring in other estuarine and coastal areas all along the West Coast, and has already taken place in other regions of the United States, such as the Great Lakes, with consequent harm to fisheries and ecosystems. Furthermore, ballast water may

contain viruses and bacteria, and has, therefore, been recognized by the International Maritime Organization as a possible method of introducing diseases harmful to indigenous human, animal, and plant life. The Legislature therefore declares that the people of the state have a primary interest in the regulation of the dumping of ballast water originating in foreign ports in any river, estuary, bay, or coastal area of this state.

SEC. 7. Section 6453 of the Fish and Game Code is amended to read:

6453. (a) On or before March 1 of each year following the first year after triploid grass carp introduction, the permittee shall provide to the department all of the information required by the department, including, but not limited to, the following:

(1) The number and size of triploid grass carp recommended for the waterway stocked.

(2) The number and size of triploid grass carp stocked in the waterway.

(3) The acres of aquatic plants, by species, at the peak of the growing season in the year prior to introduction of triploid grass carp in the waterway stocked.

(4) The acres of aquatic plants, by species, at the peak of the current year growing season.

(b) The annual report shall be submitted until five years after the use of triploid grass carp to control aquatic plant pests is terminated, unless evidence acceptable to the department is provided that all triploid grass carp have been removed from the waterway.

SEC. 7.5. Section 6455 of the Fish and Game Code is amended to read:

6455. The department shall impose conditions in the permit to use triploid grass carp under this article that it finds necessary to prevent escape of the triploid grass carp from the targeted area. The conditions shall include, but are not limited to, the following:

(a) No permit shall be issued for the use of triploid grass carp in waters with an open fresh water connection to other waters of the state.

(b) Any waters in which triploid grass carp are used under this article shall be under the control of the permittee. In addition, barriers to fish movement acceptable to the department shall be in place before introduction of triploid grass carp under this article. Movement of triploid grass carp to areas outside the control of the permittee is prohibited.

(c) Any waters in which triploid grass carp are used under this article shall have sufficient dissolved oxygen and suitable vegetation for consumption to sustain the introduced triploid grass carp, as determined by the department.

(d) Except within closed basins, including the Salton Sea, no permit shall be issued for the use of triploid grass carp within the 100-year flood plain.

(e) Any person or persons engaging in the introduction of triploid grass carp into any area, or in the transfer of triploid grass carp from one site to another, without a permit from the department shall be punished by a fine of not more than five thousand dollars ($5,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

SEC. 8. Section 7149 of the Fish and Game Code, as amended by Section 37 of Chapter 112 of the Statutes of 2001, is amended to read:

7149. (a) A sport fishing license granting the privilege to take any fish, reptile, or amphibia anywhere in this state for purposes other than profit shall be issued to any of the following:

(1) A resident of this state, over the age of 16 years, upon payment during the 1987 calendar year, or, if issued after the beginning of the year, for the remainder thereof, upon payment of a fee of eighteen dollars ($18), or upon the payment during a calendar year beginning on or after January 1, 1988, of the base fee of sixteen dollars and seventy-five cents ($16.75), as adjusted under Section 713.

(2) A nonresident, over the age of 16 years, for the period of a calendar year, or, if issued after the beginning of the year, for the remainder thereof, upon payment of a base fee of forty-five dollars ($45), as adjusted under Section 713.

(3) A nonresident, over the age of 16 years for the period of 10 consecutive days beginning on the date specified on the license upon payment of the fee set forth in paragraph (1), as adjusted under Section 713.

(4) A resident or nonresident, over the age of 16 years, for two consecutive designated calendar days, upon payment of the base fee of seven dollars ($7) as adjusted under Section 713. Notwithstanding Section 1053, more than one two-day license issued for different two-day periods may be issued to, or possessed by, a person at one time.

(b) A sport ocean fishing license granting the licensee to take any fish from ocean waters of this state for purposes other than profit shall be issued to a resident of this state, over the age of 16 years, for the period of a calendar year, or if issued after the beginning of the year, for the remainder thereof, upon payment of a base fee of ten dollars ($10), as adjusted under Section 713.

(c) A sport ocean finfishing license granting the privilege to take only finfish from the ocean waters of this state for purposes other than profit shall be issued to a person over the age of 16 years for one designated day, upon the payment for a designated day in the license year beginning

on January 1 of the base fee of four dollars ($4), as adjusted under Section 713.

(d) For the purposes of this section, the adjustment under Section 713 shall be calculated and added to the base fees to establish the fees paid for licenses issued in the license years beginning on and after January 1, 1988, in accordance with Section 713.

(e) California sport fishing license stamps shall be issued by authorized license agents in the same manner as sport fishing licenses, and no compensation may be paid to the authorized license agent for issuing the stamps except as provided in Section 1055.

(f) This section does not apply to licenses, permits, reservations, tags, or other entitlements issued through the Automated License Data System.

SEC. 9. Section 7149 of the Fish and Game Code, as amended by Section 38 of Chapter 112 of the Statutes of 2001, is repealed.

SEC. 10. Section 7149.4 of the Fish and Game Code, as amended by Chapter 112 of the Statutes of 2001, is amended to read:

7149.4. (a) It is unlawful for any person to fish with two rods without first obtaining a second-rod sport fishing stamp, in addition to a valid California sport fishing license and any applicable stamp issued pursuant to subdivision (a) of Section 7149, and having that stamp affixed to his or her valid sport fishing license. Any person who has a valid second-rod sport fishing stamp affixed to his or her valid sport fishing license may fish with two rods in inland lakes and reservoirs in any sport fishery in which the regulations of the commission provide for the taking of fish by angling.

(b) In the Colorado River District, any person who has a valid second-rod sport fishing stamp attached to his or her valid sport fishing license issued pursuant to subdivision (a) of Section 7149 may fish with two rods in any sport fishery in which the regulations of the commission provide for the taking of fish by angling.

(c) The department or an authorized license agent shall issue a second-rod sport fishing stamp upon payment of a base fee of seven dollars and fifty cents ($7.50) during the 1995 calendar year and subsequent years, as adjusted under Section 713.

(d) This section does not apply to licenses, permits, reservations, tags, or other entitlements issued through the Automated License Data System.

SEC. 11. Section 7149.45 of the Fish and Game Code, as added by Chapter 112 of the Statutes of 2001, is amended to read:

7149.45. (a) It is unlawful for any person to fish with two rods without first obtaining a second-rod sport fishing validation, in addition to a valid California sport fishing license and any applicable validation issued pursuant to subdivision (a) of Section 7149.05, and having that

validation affixed to his or her valid sport fishing license. Any person who has a valid second-rod sport fishing validation affixed to his or her valid sport fishing license may fish with two rods in inland lakes and reservoirs in any sport fishery in which the regulations of the commission provide for the taking of fish by angling.

(b) In the Colorado River District, any person who has a valid second-rod sport fishing license validation affixed to his or her valid sport fishing license issued pursuant to subdivision (a) of Section 7149.05 may fish with two rods in any sport fishery in which the regulations of the commission provide for the taking of fish by angling.

(c) The department or an authorized license agent shall issue a second-rod sport fishing validation upon payment of a base fee of seven dollars and fifty cents ($7.50) during the 1995 calendar year and subsequent years, as adjusted under Section 713.

(d) This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.

SEC. 12. Section 7361 of the Fish and Game Code is amended to read:

7361. Fees received by the department pursuant to Sections 7360 and 7360.1 shall be deposited in a separate account in the Fish and Game Preservation Fund. The department shall expend the funds in that account solely to increase the abundance of striped bass consistent with state and federal Endangered Species Act requirements, by producing striped bass and restoring their aquatic habitat, with the goal of restoring a self-sustaining, naturally reproducing Bay-Delta striped bass population, consistent with the striped bass policy goals established by the commission; and to fund any other recommendations made by the Striped Bass Stamp Fund Advisory Committee appointed pursuant to Section 7362. Funds received pursuant to Sections 7360 and 7360.1 may not be used for striped bass production and restoration in lieu of annual funding from the sale of fishing licenses, from the Federal Aid in Sport Fish Restoration Act (16 U.S.C. Secs. 777 to 777l, inclusive) revenues, or from an appropriation by any statute in existence on January 1, 1998.

SEC. 13. Section 7362 of the Fish and Game Code is amended to read:

7362. (a) The director shall appoint a Striped Bass Stamp Fund Advisory Committee, consisting of nine members. The members of the committee shall be selected from names of persons submitted by striped bass anglers and associations representing striped bass anglers of this state and shall serve at the discretion of the director. The director shall appoint persons to the committee who possess experience in subjects with specific value to the committee and shall attempt to balance the perspective of different groups of persons.

(b) The advisory committee shall annually recommend to the department projects and budgets for the expenditure of revenue received pursuant to Sections 7360 and 7360.1. The department shall give full and complete consideration to the committee's recommendations. In submitting recommendations for the Governor's Budget, the department may recommend programs for funding that are not contained in the committee's recommendation, except that all revenue raised pursuant to Sections 7360 and 7360.1 shall be spent in accordance with Section 7361. The department shall notify the committee prior to placing funding provisions in the budget. The department shall submit to the committee an annual accounting of funds derived from striped bass stamps, including the number of stamps sold, funds generated and expended, and a status report of programs funded pursuant to this article.

SEC. 14. Section 7363 of the Fish and Game Code is amended to read:

7363. This article 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. 15. Section 7852.3 of the Fish and Game Code is amended to read:

7852.3. (a) The department shall issue a commercial fishing license to a person who is 16 years of age or more but less than 18 years of age and who is actively assisting in fishing activities for a fee of thirty-five dollars ($35).

(b) Nothing in this section affects other provisions of law relating to employment of minors.

SEC. 16. Section 7860 of the Fish and Game Code is amended to read:

7860. (a) Except as provided in subdivision (f) or (g), no person who is 18 years of age or more and less than 70 years of age, on or before April 1 of the current license year, shall take salmon for commercial purposes or be on board a vessel on which salmon are taken for commercial purposes while salmon are being taken or transported unless that person has a commercial fishing salmon stamp issued pursuant to this section affixed to his or her commercial fishing license.

(b) Except as provided in subdivision (f) or (g), the operator of a vessel on which salmon are taken for commercial purposes shall not permit a person on board that vessel while salmon are being taken or transported unless that person was less than 18 years of age or 70 years of age or more on April 1 of the current license year or that person has a commercial fishing salmon stamp affixed to the person's commercial fishing license.

(c) Except as provided in subdivision (b) of Section 7852.3 and this subdivision, the department shall issue a commercial fishing salmon

stamp upon application therefor and payment of the fee of eighty-five dollars ($85). For any commercial salmon season preceded by a commercial salmon season in which the commercial troll salmon landings in this state equal or exceed 3,000,000 pounds dressed weight, as determined by the department, the fee shall be increased by twelve dollars and fifty cents ($12.50) for every 250,000 pounds over 3,000,000 pounds of dressed weight landings, except that the total fees as adjusted shall not exceed two hundred sixty dollars ($260).

(d) A commercial fishing salmon stamp is valid during the commercial salmon season of the year in which it was issued.

(e) Notwithstanding Section 1053, upon application and payment of an additional fee equal to that prescribed in subdivision (c), the department may issue an additional commercial fishing salmon stamp for a crewmember to the owner or operator of a vessel who holds a commercial fishing salmon stamp.

(f) Notwithstanding subdivision (a), one crewmember of a vessel for which a commercial fishing salmon stamp is issued pursuant to subdivision (e) may be aboard that vessel and take salmon for commercial purposes as a crewmember on that vessel without obtaining a commercial fishing salmon stamp under the following conditions:

(1) The crewmember is designated by name and commercial fishing license number on a form furnished by the department before salmon are taken on the vessel when that crewmember is aboard.

(2) The crewmember has a valid commercial fishing license issued under Section 7850.

(3) The commercial fishing salmon stamp for the crewmember is affixed to the form prescribed in paragraph (1) on which the vessel registration number of the vessel is entered and on which the crewmember who is exempted by this subdivision is designated by the last entered name and commercial fishing license number.

(g) Persons who are exempt from the license requirements, or who are not required to be licensed, pursuant to Section 7850, are exempt from the requirements of this section.

SEC. 17. Section 7881 of the Fish and Game Code is amended to read:

7881. (a) Every person who owns or operates a vessel in public waters in connection with fishing operations for profit in this state, or who brings fish into this state, or who, for profit, permits persons to fish therefrom, shall submit an application for commercial boat registration on forms provided by the department and shall be issued a registration number.

(b) Upon payment of a fee of two hundred dollars ($200) by the resident owner or operator of the vessel, the department shall issue a

commercial boat registration. The commercial boat registration shall be carried aboard the vessel at all times and posted in a conspicuous place.

(c) Upon payment of a fee of four hundred dollars ($400) by the nonresident owner or operator of the vessel, the department shall issue a commercial boat registration. The commercial boat registration shall be carried aboard the vessel at all times and posted in a conspicuous place.

(d) If a registered vessel is lost, destroyed, or sold, the owner of the vessel shall immediately report the loss, destruction, or sale to the department.

(e) This section does not apply to any person required to be licensed as a guide pursuant to Section 2536.

SEC. 18. Section 8053 of the Fish and Game Code is amended to read:

8053. Landing taxes imposed by this article shall be paid quarterly to the department within 30 days after the close of each quarter.

If any landing tax is not paid within 30 days after the close of the quarter for which it is due, the department shall collect amounts owing under the procedures prescribed for sales and use taxes provided in Chapter 5 (commencing with Section 6451) and Chapter 6 (commencing with Section 6701) of Part 1 of Division 2 of the Revenue and Taxation Code, insofar as they may be applicable, and for those purposes, ''board'' means the department and ''the date on which the tax became due and payable'' means that date 30 days after the close of the quarter for which it is due.

SEC. 19. Section 8405.4 of the Fish and Game Code is amended to read:

8405.4. This article shall become inoperative on April 1, 2005, and as of January 1, 2006, is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 20. Section 8552.6 of the Fish and Game Code is amended to read:

8552.6. (a) Notwithstanding Section 8552, a herring permit may be issued to two individuals if one of the following criteria is met:

(1) The individuals are married to each other and file with the department a certified copy of their certificate of marriage and a declaration under penalty of perjury, or a court order, stating that the permit is community property.

(2) The individuals meet both of the following requirements:

(A) They are both engaged in the herring roe fishery either by fishing aboard the vessel or by personally participating in the management, administration, and operation of the partnership's herring fishing business.

(B) There is a partnership constituting equal, 50 percent, ownership in a herring fishery operation, including a vessel or equipment, and that partnership is demonstrated by any two of the following:

(i) A copy of a federal partnership tax return.

(ii) A written partnership agreement.

(iii) Joint ownership of a fishing vessel used in the herring fishery as demonstrated on federal vessel license documents.

(b) For purposes of this section, a herring permit does not constitute a herring fishing operation. A herring permit may be transferred to one of the partners to be held thereafter in that partner's name only if that partner has not less than 10 points computed pursuant to paragraph (2) of subdivision (a) of Section 8552.8 and there has been a death or retirement of the other partner, a dissolution of partnership, or the partnership is dissolved by a dissolution of marriage or decree of legal separation. A transfer under this section shall be authorized only if proof that the partnership has existed for three or more consecutive years is furnished to the department or a certified copy of a certificate of marriage is on file with the department and the permit is community property as provided in subdivision (a). The transferor of a permit shall not, by reason of the transfer, become ineligible to participate further in the herring fishery or to purchase another permit.

(c) Notwithstanding subdivision (b), in the event of the death of one of the partners holding a herring permit pursuant to this section, where the partnership existed for longer than six months but less than three years and the surviving partner does not have the minimum points pursuant to subdivision (b) to qualify for a permit transfer, the permit may be transferred on an interim basis for a period of not more than 10 years to the surviving partner if an application is submitted to the department within one year of the deceased partner's death and the surviving partner participates in the fishery for the purpose of achieving the minimum number of points to be eligible for a permit transfer pursuant to Section 8552.2. The interim permit shall enable the surviving partner to participate in the herring fishery. At the end of the interim permit period, the surviving partner, upon application to the department, may be issued the permit if he or she has participated in the fishery and gained the minimum number of experience points for a permit.

SEC. 21. Section 8601.5 of the Fish and Game Code is amended to read:

8601.5. (a) Set nets and set lines shall be marked at both ends with buoys displaying above their waterlines, in numerals at least 2 inches high, the fisherman's identification number.

(b) Each piece or panel of a set net shall be marked along the corkline of the net, in a manner determined by the department to adequately

identify the net, with the fisherman's identification number. The distance between the markings shall not exceed 45 fathoms. If the lost or abandoned net is recovered by the department or persons designated by the department, the commission may require the owner of the lost or abandoned net to pay for all recovery costs. The commission may revoke the owner's set net permit issued pursuant to Section 8681 for failure to comply with this subdivision.

(c) If a person is unable to recover a set net or portion of a set net, the person shall contact one of the department offices located in the City of Belmont, Monterey, Los Alamitos, or San Diego, not later than 72 hours after returning to port following the loss and shall report all of the following information:

(1) The date and time when the set net was lost.

(2) The location, including depth, where the net was lost.

(3) A description of the lost net, including the mesh size, length, height, and target species, and whether anchors remain attached to the net.

(4) The name and fisherman's identification number of the person owning the net.

(5) The name and fisherman's identification number of the person fishing with the net, if different from paragraph (4).

(6) The name and California Fish and Game number of the vessel from which the lost net was being fished.

SEC. 22. Section 9001.5 of the Fish and Game Code is amended to read:

9001.5. (a) Finfish, other than sablefish and hagfish, shall not be taken with traps for commercial purposes in ocean waters between a line extending due west true from Point Arguello in Santa Barbara County and the United States-Mexico international boundary line except under a valid finfish trap permit issued to the person that has not been suspended or revoked. At least one person aboard each commercial fishing vessel shall have a valid finfish trap permit. Notwithstanding Section 9001, a finfish trap permitholder is not required to obtain or possess a valid general trap permit when taking finfish with traps. Any person who assists in the taking of finfish with traps shall have either a finfish trap permit or a valid general trap permit.

(b) A finfish trap permit shall only be issued to a person who held a finfish trap permit to take finfish during the immediately preceding permit year that has not been suspended or revoked and who landed at least 50 pounds of finfish, other than hagfish or sablefish, taken in finfish traps as reported on one or more fish landing receipts during the immediately preceding permit year. Applications for renewal of a finfish trap permit shall be received by the department, or, if mailed, postmarked, by May 31 of each year.

SEC. 23. Section 9001.6 of the Fish and Game Code is amended to read:

9001.6. (a) A finfish trap permit issued pursuant to Section 9001.5 authorizes finfish to be taken with finfish traps only subject to the following limitations:

(1) No lobster may be possessed aboard or landed from any vessel for commercial purposes on which finfish are also present unless at least one person on board has a valid finfish trap permit issued to that person pursuant to Section 9001.5 that has not been suspended or revoked and every person on board has a valid lobster permit issued pursuant to Section 8254 that has not been suspended or revoked and is in compliance with this article and Article 5 (commencing with Section 8250) of Chapter 2 and the regulations adopted pursuant to these articles. Lobster may not be used as bait in finfish traps, and any lobster found in finfish traps that may not be possessed pursuant to this article or Article 5 (commencing with Section 8250) of Chapter 2 shall be returned to the water immediately.

(2) During the period from one hour after sunset to one hour before sunrise finfish traps that are left in the water shall be unbaited with the door secured open. However, if, for reasons beyond the control of the permittee, all trap doors cannot be secured open prior to one hour after sunset, the permittee shall immediately notify the department.

(3) Timed buoy release mechanisms commonly termed ''popups'' may not be used on buoy lines attached to finfish traps.

(4) Trap destruction devices used on finfish traps shall conform to the current requirements for those devices adopted by the commission.

(5) No finfish traps may be within 750 feet of any pier, breakwall, or jetty in District 19, 19A, 19B, 20, 20A, 20B, or 21.

(6) Not more than 50 finfish traps may be used in state waters along the mainland shore.

(7) The mesh of any finfish trap shall measure two inches by two inches.

(b) The fee for the finfish trap permit issued pursuant to Section 9001.5 is one hundred ten dollars ($110).

(c) Under a general trap permit issued pursuant to Section 9001, Korean traps, defined as molded plastic cylinders not exceeding 6 inches in diameter and 24 inches in length, or ''bucket traps'' constructed of plastic buckets of five gallons or less in capacity, may be used to take only hagfish for commercial purposes. The number of traps that may be possessed on board a vessel and in the water for the purposes of taking hagfish shall not exceed 500 Korean traps or 200 bucket traps. No permittee may possess both Korean traps and other types of traps aboard a vessel at the same time. When Korean traps or bucket traps are being

used or possessed aboard a boat, no species of finfish other than hagfish shall be taken, possessed aboard a boat, or sold for commercial purposes.

(d) This section shall become inoperative on April 1, 2005, and as of January 1, 2006, is repealed, unless a later enacted statute that is enacted before January 1, 2006, deletes or extends that date.

SEC. 24. Section 9001.8 is added to the Fish and Game Code, to read:

9001.8. In ocean waters between a line extending due west true from Point Arguello in Santa Barbara County and the United States-Mexico international boundary line, the following apply:

(a) Under a general trap permit issued pursuant to Section 9001, a trap used to take sablefish for commercial purposes shall be six feet or less in its greatest dimension.

(b) The mesh of any trap used for sablefish pursuant to this section shall measure not less than two inches by two inches.

(c) The buoy identification number for a sablefish trap or string of traps used under a general trap permit issued pursuant to Section 9001 is the commercial fishing license number issued to the operator of the trap pursuant to Section 7852, followed by the letter ''B.''

(d) Under a general trap permit issued pursuant to Section 9001 and pursuant to this section, sablefish may be taken with traps only in waters 200 fathoms or greater in depth.

(e) No permittee may possess aboard a vessel at the same time, sablefish traps and any other commercial fishing gear, except that spot prawn traps may be possessed during spot prawn trap open fishing periods as established by the Fish and Game Commission and if the permittee has a valid spot prawn trap permit issued pursuant to regulations adopted by the commission.

SEC. 25. Section 12002.8 of the Fish and Game Code is amended to read:

12002.8. (a) The court shall order the department to permanently revoke and the department shall permanently revoke, the commercial fishing license and any commercial fishing permits of any person convicted of either of the following:

(1) Taking or possessing abalone out of season.

(2) Taking or possessing abalone taken illegally from any area north of Point Sur.

(b) The court shall order the department to permanently revoke and the department shall permanently revoke the commercial fishing license and any commercial fishing permits of any person convicted of either of the following two offenses, if the person possessed more than 12 abalone at the time of the offense:

(1) Removing abalone from the shell or possessing abalone illegally removed from the shell.

(2) Taking or possessing abalone that are less than the minimum size.

(c) Any person sentenced pursuant to subdivision (a) or (b) shall not thereafter be eligible for any license or permit to take or possess fish for sport or commercial purposes.

(d) Notwithstanding Sections 12000, 12001, and 12002, the commercial fishing license of the master of a vessel may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon the second conviction in three years of the master or the master's agent, servant, employee, or any other person acting under the master's direction or control, for a violation of any of the following provisions or regulations adopted pursuant thereto:

(1) Article 2 (commencing with Section 8150.5), Article 3 (commencing with Section 8180), Article 4 (commencing with Section 8210), Article 5 (commencing with Section 8250), Article 6 (commencing with Section 8275), Article 9 (commencing with Section 8370), Article 13 (commencing with Section 8495), and Article 15 (commencing with Section 8550) of Chapter 2 of Part 3 of Division 6.

(2) Article 1 (commencing with Section 8601), Article 2 (commencing with Section 8623), Article 4 (commencing with Section 8660), Article 5 (commencing with Section 8680), Article 6 (commencing with Section 8720), Article 7 (commencing with Section 8750), Article 8 (commencing with Section 8780), and Article 10 (commencing with Section 8830) of Chapter 3 of Part 3 of Division 6.

(3) Article 1 (commencing with Section 9000) of Chapter 4 of Part 3 of Division 6.

(e) A master's license shall not be revoked unless both the first and second convictions are for a violation by the master or a violation occurring when the person convicted was acting as the master's agent, servant, employee, or acting under the master's direction or control.

(f) The master of a vessel is the person on board the vessel who is in charge of the vessel.

SEC. 26. Section 12006.6 of the Fish and Game Code is amended to read:

12006.6. Notwithstanding Section 12000 or 12002.8, and in addition to Section 12009, and notwithstanding the type of fishing license or permit held, if any person is convicted of a violation of Section 5521 or 5521.5, and the offense occurs in an area closed to the taking of abalone for commercial purposes, and the person takes or possesses more than 12 abalone at one time or takes abalone in excess of the annual bag limit, that person shall be punished by all of the following:

(a) A fine of not less than fifteen thousand dollars ($15,000) or more than forty thousand dollars ($40,000).

(b) The court shall order the department to permanently revoke, and the department shall permanently revoke, the commercial fishing license

and any commercial fishing permits of that person. The person punished under this subdivision shall not, thereafter, be eligible for any license or permit to take or possess fish for sport or commercial purposes, including, but not limited to, a commercial fishing license or a sport fishing or sport ocean fishing license. Notwithstanding any other provision of law, the commercial license or permit of a person arrested for a violation punishable under this section may not be sold, transferred, loaned, leased, or used as security for any financial transaction until disposition of the charges is final.

(c) Any vessel, diving or other fishing gear or apparatus, or vehicle used in the commission of an offense punishable under this section shall be seized, and shall be ordered forfeited in the same manner prescribed for nets or traps used in violation of this code, as described in Article 3 (commencing with Section 8630) of Chapter 3 of Part 3 of Division 6, or in the manner prescribed in Section 12157.

(d) Not less than 50 percent of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to this section shall be allocated for the support of the Special Operations Unit of the Wildlife Protection Division of the department and used for law enforcement purposes.

SEC. 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.

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## CHAPTER 754

An act to amend Section 1211 of the Code of Civil Procedure, to amend Sections 750 and 7895 of the Family Code, to amend Section 11165.7 of the Penal Code, and to amend Sections 358.1 and 827 of the Welfare and Institutions Code, relating to judicial proceedings.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 1211 of the Code of Civil Procedure is amended to read:

1211. (a) When a contempt is committed in the immediate view and presence of the court, or of the judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he or she be punished as therein prescribed.

When the contempt is not committed in the immediate view and presence of the court, or of the judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators, or other judicial officers.

(b) In family law matters, filing of the Judicial Council form entitled ''Order to Show Cause and Affidavit for Contempt (Family Law)'' shall constitute compliance with this section.

SEC. 2. Section 750 of the Family Code is amended to read:

750. A husband and wife may hold property as joint tenants or tenants in common, or as community property, or as community property with a right of survivorship.

SEC. 3. Section 7895 of the Family Code is amended to read:

7895. (a) Upon appeal from a judgment freeing a child who is a dependent child of the juvenile court from parental custody and control, the appellate court shall appoint counsel for the appellant as provided by this section.

(b) Upon motion by the appellant and a finding that the appellant is unable to afford counsel, the appellate court shall appoint counsel for the indigent appellant, and appellant's counsel shall be provided a free copy of the reporter's and clerk's transcript. All of those costs are a charge against the court.

(c) The reporter's and clerk's transcripts shall be prepared and transmitted immediately after filing of the notice of appeal, at court expense and without advance payment of fees. If the appellant is able to afford counsel, the court may seek reimbursement from the appellant for the cost of the transcripts under subdivision (c) of Section 68511.3 of the Government Code as though the appellant had been granted permission to proceed in forma pauperis.

SEC. 4. Section 11165.7 of the Penal Code, as amended by Chapter 133 of the Statutes of 2001, is amended to read:

11165.7. (a) As used in this article, ''mandated reporter'' is defined as any of the following:

(1) A teacher.

(2) An instructional aide.

(3) A teacher's aide or teacher's assistant employed by any public or private school.

(4) A classified employee of any public school.

(5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school.

(6) An administrator of a public or private day camp.

(7) An administrator or employee of a public or private youth center, youth recreation program, or youth organization.

(8) An administrator or employee of a public or private organization whose duties require direct contact and supervision of children.

(9) Any employee of a county office of education or the California Department of Education, whose duties bring the employee into contact with children on a regular basis.

(10) A licensee, an administrator, or an employee of a licensed community care or child day care facility.

(11) A headstart teacher.

(12) A licensing worker or licensing evaluator employed by a licensing agency as defined in Section 11165.11.

(13) A public assistance worker.

(14) An employee of a child care institution, including, but not limited to, foster parents, group home personnel, and personnel of residential care facilities.

(15) A social worker, probation officer, or parole officer.

(16) An employee of a school district police or security department.

(17) Any person who is an administrator or presenter of, or a counselor in, a child abuse prevention program in any public or private school.

(18) A district attorney investigator, inspector, or family support officer unless the investigator, inspector, or officer is working with an attorney appointed pursuant to Section 317 of the Welfare and Institutions Code to represent a minor.

(19) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, who is not otherwise described in this section.

(20) A firefighter, except for volunteer firefighters.

(21) A physician, surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code.

(22) Any emergency medical technician I or II, paramedic, or other person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(23) A psychological assistant registered pursuant to Section 2913 of the Business and Professions Code.

(24) A marriage, family and child therapist trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code.

(25) An unlicensed marriage, family, and child therapist intern registered under Section 4980.44 of the Business and Professions Code.

(26) A state or county public health employee who treats a minor for venereal disease or any other condition.

(27) A coroner.

(28) A medical examiner, or any other person who performs autopsies.

(29) A commercial film and photographic print processor, as specified in subdivision (e) of Section 11166. As used in this article, ''commercial film and photographic print processor'' means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term includes any employee of such a person; it does not include a person who develops film or makes prints for a public agency.

(30) A child visitation monitor. As used in this article, ''child visitation monitor'' means any person who, for financial compensation, acts as monitor of a visit between a child and any other person when the monitoring of that visit has been ordered by a court of law.

(31) An animal control officer or humane society officer. For the purposes of this article, the following terms have the following meanings:

(A) ''Animal control officer'' means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations.

(B) ''Humane society officer'' means any person appointed or employed by a public or private entity as a humane officer who is qualified pursuant to Section 14502 or 14503 of the Corporations Code.

(32) A clergy member, as specified in subdivision (c) of Section 11166. As used in this article, ''clergy member'' means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization.

(33) Any employee of any police department, county sheriff's department, county probation department, or county welfare department.

(34) An employee or volunteer of a Court Appointed Special Advocate program, as defined in Rule 1424 of the Rules of Court.

(b) Volunteers of public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

(c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part

of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.

(d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.

(e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article.

SEC. 5. Section 358.1 of the Welfare and Institutions Code is amended to read:

358.1. Each social study or evaluation made by a social worker or child advocate appointed by the court, required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered these services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child to his or her parents and for achieving legal permanence for the child if efforts to reunify fail, is recommended to the court by the county welfare department or probation officer.

(c) Whether the best interests of the child will be served by granting reasonable visitation rights with the child to his or her grandparents, in order to maintain and strengthen the child's family relationships.

(d) Whether the child has 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 interest.

(e) Whether the 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.

(f) Whether the parent has been advised of his or her option to participate in adoption planning, including the option to enter into a postadoption contact agreement as described in Section 8714.7 of the Family Code, and to voluntarily relinquish the child for adoption if an adoption agency is willing to accept the relinquishment.

(g) The appropriateness of any relative placement pursuant to Section 361.3; however, this consideration shall not be cause for continuance of the dispositional hearing.

SEC. 6. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except

for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a child custody evaluator appointed by the court pursuant to Section 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing him or her as the minor's counsel.

(L) Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.

(M) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, which pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed

and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical, or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (L), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course

of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public

school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: ''Unlawful Dissemination Of This Information Is A Misdemeanor.'' Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a ''juvenile case file'' means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

SEC. 7. 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.

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## CHAPTER 755

An act to amend Section 706.030 of the Code of Civil Procedure, to amend Sections 3751.5, 3767, 4508, 4550, 4572, 5214, 5260, 7571, 17212, 17304, 17401, 17404, 17520, 17522, 17525, 17526, 17530, 17708, 17714, 17800, and 17804 of the Family Code, and to amend Sections 903.45, 903.5, 903.7, 10081, 10084, and 11457 of the Welfare and Institutions Code, relating to child support, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 706.030 of the Code of Civil Procedure is amended to read:

706.030. (a) A ''withholding order for support'' is an earnings withholding order issued on a writ of execution to collect delinquent amounts payable under a judgment for the support of a child, or spouse or former spouse, of the judgment debtor. A withholding order for support shall be denoted as such on its face.

(b) The local child support agency may issue a withholding order for support on a notice of levy pursuant to Section 17522 of the Family Code to collect a support obligation.

(1) When the local child support agency issues a withholding order for support, a reference in this chapter to a levying officer is deemed to mean the local child support agency who issues the withholding order for support.

(2) Service of a withholding order for support issued by the local child support agency may be made by first-class mail or in any other manner described in Section 706.101. Service of a withholding order for support

issued by the local child support agency is complete when it is received by the employer or a person described in paragraph (1) or (2) of subdivision (a) of Section 706.101, or if service is by first-class mail, service is complete as specified in Section 1013.

(3) The local child support agency shall serve upon the employer the withholding order for support, a copy of the order, and a notice informing the support obligor of the effect of the order and of his or her right to hearings and remedies provided in this chapter and in the Family Code. The notice shall be accompanied by the forms necessary to obtain an administrative review and a judicial hearing and instructions on how to file the forms. Within 10 days from the date of service, the employer shall deliver to the support obligor a copy of the withholding order for support, the forms to obtain an administrative review and judicial hearing, and the notice. If the support obligor is no longer employed by the employer and the employer does not owe the support obligor any earnings, the employer shall inform the local child support agency that the support obligor is no longer employed by the employer.

(4) An employer who fails to comply with paragraph (3) shall be subject to a civil penalty of five hundred dollars ($500) for each occurrence.

(5) The local child support agency shall provide for an administrative review to reconsider or modify the amount to be withheld for arrearages pursuant to the withholding order for support, if the support obligor requests a review at any time after service of the withholding order. The local child support agency shall provide the review in the same manner and timeframes provided for resolution of a complaint pursuant to Section 17800 of the Family Code. The local child support agency shall notify the employer if the review results in any modifications to the withholding order for support. If the local child support agency cannot complete the administrative review within 30 calendar days of receipt of the complaint, the local child support agency shall notify the employer to suspend withholding any disputed amount pending the completion of the review and the determination by the local child support agency.

(6) Nothing in this section prohibits the support obligor from seeking a judicial determination of arrearages pursuant to subdivision (c) of Section 17256 of the Family Code or from filing a motion for equitable division of earnings pursuant to Section 706.052 either prior to or after the administrative review provided by this section. Within five business days after receiving notice of the obligor having filed for judicial relief pursuant to this section, the local child support agency shall notify the employer to suspend withholding any disputed amount pending a determination by the court. The employer shall then adjust the withholding within not more than nine days of receiving the notice from the local child support agency.

(c) Notwithstanding any other provision of this chapter:

(1) An employer shall continue to withhold pursuant to a withholding order for support until the earliest of the dates specified in paragraph (1), (2), or (3) of subdivision (a) of Section 706.022, except that a withholding order for support shall automatically terminate one year after the employment of the employee by the employer terminates.

(2) A withholding order for support has priority over any other earnings withholding order. An employer upon whom a withholding order for support is served shall withhold and pay over earnings of the employee pursuant to that order notwithstanding the requirements of another earnings withholding order.

(3) Subject to paragraph (2) and to Article 3 (commencing with Section 706.050), an employer shall withhold earnings pursuant to both a withholding order for support and another earnings withholding order simultaneously.

(4) An employer who willfully fails to withhold and forward support pursuant to a valid earnings withholding order for support issued and served upon the employer pursuant to this chapter is liable to the support obligee, as defined in Section 5214 of the Family Code, for the amount of support not withheld, forwarded, or otherwise paid to the support obligee.

(5) Notwithstanding any other provision of law, an employer shall send all earnings withheld pursuant to a withholding order for support to the levying officer or the Child Support Centralized Collection and Distribution Unit as described in Section 17309 of the Family Code within the time period specified by federal law.

(6) Once the Child Support Centralized Collection and Distribution Unit as described in Section 17309 of the Family Code is operational, all support payments made pursuant to an earnings withholding order shall be made to that unit.

(7) Earnings withheld pursuant to an earnings withholding order for support shall be credited toward satisfaction of a support judgment as specified in Section 695.221.

SEC. 2. Section 3751.5 of the Family Code is amended to read:

3751.5. (a) Notwithstanding any other provision of law, an employer or insurer shall not deny enrollment of a child under the health insurance coverage of a child's parent on any of the following grounds:

(1) The child was born out of wedlock.

(2) The child is not claimed as a dependent on the parent's federal income tax return.

(3) The child does not reside with the parent or within the insurer's service area.

(b) Notwithstanding any other provision of law, in any case in which a parent is required by a court or administrative order to provide health

insurance coverage for a child and the parent is eligible for family health coverage through an employer or an insurer, the employer or insurer shall do all of the following, as applicable:

(1) Permit the parent to enroll under health insurance coverage any child who is otherwise eligible to enroll for that coverage, without regard to any enrollment period restrictions.

(2) If the parent is enrolled in health insurance coverage but fails to apply to obtain coverage of the child, enroll that child under the health coverage upon presentation of the court order or request by the local child support agency, the other parent or person having custody of the child, or the Medi-Cal program.

(3) The employer or insurer shall not disenroll or eliminate coverage of a child unless either of the following applies:

(A) The employer has eliminated family health insurance coverage for all of the employer's employees.

(B) The employer or insurer is provided with satisfactory written evidence that either of the following apply:

(i) The court order or administrative order is no longer in effect or is terminated pursuant to Section 3770.

(ii) The child is or will be enrolled in comparable health insurance coverage through another insurer that will take effect not later than the effective date of the child's disenrollment.

(c) In any case in which health insurance coverage is provided for a child pursuant to a court or administrative order, the insurer shall do all of the following:

(1) Provide any information, including, but not limited to, the health insurance membership or identification card regarding the child, the evidence of coverage and disclosure form, and any other information provided to the covered parent about the child's health care coverage to the noncovered parent having custody of the child or any other person having custody of the child and to the local child support agency when requested by the local child support agency.

(2) Permit the noncovered parent or person having custody of the child, or a provider with the approval of the noncovered parent or person having custody, to submit claims for covered services without the approval of the covered parent.

(3) Make payment on claims submitted in accordance with subparagraph (2) directly to the noncovered parent or person having custody, the provider, or to the Medi-Cal program. Payment on claims for services provided to the child shall be made to the covered parent for claims submitted or paid by the covered parent.

(d) For purposes of this section, ''insurer'' includes every health care service plan, self-insured welfare benefit plan, including those regulated pursuant to the Employee Retirement Income Security Act of 1974 (29

U.S.C. Sec. 1001, et seq.), self-funded employer plan, disability insurer, nonprofit hospital service plan, labor union trust fund, employer, and any other similar plan, insurer, or entity offering a health coverage plan.

(e) For purposes of this section, ''person having custody of the child'' is defined as a legal guardian, a caregiver who is authorized to enroll the child in school or to authorize medical care for the child pursuant to Section 6550, or a person with whom the child resides.

(f) For purposes of this section, ''employer'' has the meaning provided in Section 5210.

(g) For purposes of this section, the insurer shall notify the covered parent and noncovered parent having custody of the child or any other person having custody of the child in writing at any time that health insurance for the child is terminated.

(h) The requirements of subdivision (g) shall not apply unless the court, employer, or person having custody of the child provides the insurer with one of the following:

(1) A qualified medical child support order that meets the requirements of subdivision (a) of Section 1169 of Title 29 of the United States Code.

(2) A health insurance coverage assignment or assignment order made pursuant to Section 3761.

(3) A national medical support notice made pursuant to Section 3773.

(i) The noncovered parent or person having custody of the child may contact the insurer, by telephone or in writing, and request information about the health insurance coverage for the child. Upon request of the noncovered parent or person having custody of the child, the insurer shall provide the requested information that is specific to the health insurance coverage for the child.

SEC. 3. Section 3767 of the Family Code is amended to read:

3767. The employer or other person providing health insurance shall do all of the following:

(a) Notify the applicant for the assignment order or notice of assignment of the commencement date of the coverage of the child.

(b) Provide evidence of coverage and any information necessary for the child to obtain benefits through the coverage to both parents or the person having custody of the child and to the local child support agency when requested by the local child support agency.

(c) Upon request by the parents or person having custody of the child, provide all forms and other documentation necessary for the purpose of submitting claims to the insurance carrier which the employer or other person providing health insurance usually provides to insureds.

SEC. 4. Section 4508 of the Family Code is amended to read:

4508. (a) This section does not apply to any child support obligor who is subject to an earnings assignment order pursuant to Chapter 8 (commencing with Section 5200).

(b) Except as provided in subdivision (a), every order or judgment to pay child support may require a child support obligor to designate an account for the purpose of paying the child support obligation by electronic funds transfer, as defined in subdivision (a) of Section 6479.5 of the Revenue and Taxation Code. The order or judgment may require the obligor to deposit funds in an interest-bearing account with a state or federally chartered commercial bank, a savings and loan association, or in shares of a federally insured credit union doing business in this state, and shall require the obligor to maintain funds in the account sufficient to pay the monthly child support obligation. The court may order that each payment be electronically transferred to either the obligee's account or the local child support agency account. The obligor shall be required to notify the obligee if the depository institution or the account number is changed. No interest shall accrue on any amount subject to electronic funds transfer as long as funds are maintained in the account that are sufficient to pay the monthly child support obligation.

SEC. 5. Section 4550 of the Family Code is amended to read:

4550. ''Child support obligee'' as used in this chapter means either the parent, guardian, or other person to whom child support has been ordered to be paid or the local child support agency designated by the court to receive the payment. The local child support agency is the "child support obligee'' for the purposes of this chapter for all cases in which an application for services has been filed under Part D of Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

SEC. 6. Section 4572 of the Family Code is amended to read:

4572. The court shall cause a copy of its order to disburse and replenish funds to be served upon the depository institution where the child support security deposit is maintained, and upon the child support agency with jurisdiction over the case.

SEC. 7. Section 5214 of the Family Code is amended to read:

5214. ''Obligee'' or ''assigned obligee'' means either the person to whom support has been ordered to be paid, the local child support agency, or other person designated by the court to receive the payment. The local child support agency is the obligee for all Title IV-D cases as defined under Section 5212 or in which an application for services has been filed under Part D (commencing with Section 651) and Part E (commencing with Section 670) of Subchapter IV of Chapter 7 of Title 42 of the United States Code (Title IV-D or IV-E of the Social Security Act).

SEC. 8. Section 5260 of the Family Code is amended to read:

5260. (a) The court may order that service of the assignment order be stayed only if the court makes a finding of good cause or if an alternative arrangement exists for payment in accordance with paragraph (2) of subdivision (b). Notwithstanding any other provision of law, service of wage assignments issued for foreign orders for support, and service of foreign orders for the assignment of wages registered pursuant to Article 6 (commencing with Section 4950) of Chapter 6 shall not be stayed pursuant to this subdivision.

(b) For purposes of this section, good cause or an alternative arrangement for staying an assignment order is as follows:

(1) Good cause for staying a wage assignment exists only when all of the following conditions exist:

(A) The court provides a written explanation of why the stay of the wage assignment would be in the best interests of the child.

(B) The obligor has a history of uninterrupted, full, and timely payment, other than through a wage assignment or other mandatory process of previously ordered support, during the previous 12 months.

(C) The obligor does not owe an arrearage for prior support.

(D) The obligor proves, and the court finds, by clear and convincing evidence that service of the wage assignment would cause extraordinary hardship upon the obligor. Whenever possible, the court shall specify a date that any stay ordered under this section will automatically terminate.

(2) An alternative arrangement for staying a wage assignment order shall require a written agreement between the parties that provides for payment of the support obligation as ordered other than through the immediate service of a wage assignment. Any agreement between the parties which includes the staying of a service of a wage assignment shall include the concurrence of the local child support agency in any case in which support is ordered to be paid through a county officer designated for that purpose. The execution of an agreement pursuant to this paragraph shall not preclude a party from thereafter seeking a wage assignment in accordance with the procedures specified in Section 5261 upon violation of the agreement.

SEC. 9. Section 7571 of the Family Code is amended to read:

7571. (a) On and after January 1, 1995, upon the event of a live birth, prior to an unmarried mother leaving any hospital, the person responsible for registering live births under Section 102405 of the Health and Safety Code shall provide to the natural mother and shall attempt to provide, at the place of birth, to the man identified by the natural mother as the natural father, a voluntary declaration of paternity together with the written materials described in Section 7572. Staff in the hospital shall witness the signatures of parents signing a voluntary declaration of paternity and shall forward the signed declaration to the

Department of Child Support Services within 20 days of the date the declaration was signed. A copy of the declaration shall be made available to each of the attesting parents.

(b) No health care provider shall be subject to any civil, criminal, or administrative liability for any negligent act or omission relative to the accuracy of the information provided, or for filing the declaration with the appropriate state or local agencies.

(c) The local child support agency shall pay the sum of ten dollars ($10) to birthing hospitals and other entities that provide prenatal services for each completed declaration of paternity that is filed with the Department of Child Support Services, provided that the local child support agency and the hospital or other entity providing prenatal services has entered into a written agreement that specifies the terms and conditions for the payment as required by federal law.

(d) If the declaration is not registered by the person responsible for registering live births at the hospital, it may be completed by the attesting parents, notarized, and mailed to the Department of Child Support Services at any time after the child's birth.

(e) Prenatal clinics shall offer prospective parents the opportunity to sign a voluntary declaration of paternity. In order to be paid for their services as provided in subdivision (c), prenatal clinics must ensure that the form is witnessed and forwarded to the Department of Child Support Services within 20 days of the date the declaration was signed.

(f) Declarations shall be made available without charge at all local child support agency offices, offices of local registrars of births and deaths, courts, and county welfare departments within this state. Staff in these offices shall witness the signatures of parents wishing to sign a voluntary declaration of paternity and shall be responsible for forwarding the signed declaration to the Department of Child Support Services within 20 days of the date the declaration was signed.

(g) The Department of Child Support Services, at its option, may pay the sum of ten dollars ($10) to local registrars of births and deaths, county welfare departments, or courts for each completed declaration of paternity that is witnessed by staff in these offices and filed with the Department of Child Support Services. In order to receive payment, the Department of Child Support Services and the entity shall enter into a written agreement that specifies the terms and conditions for payment as required by federal law. The Department of Child Support Services shall study the effect of the ten dollar ($10) payment on obtaining completed voluntary declaration of paternity forms and shall report to the Legislature on any recommendations to change the ten dollar ($10) optional payment, if appropriate, by January 1, 2000.

(h) The Department of Child Support Services and local child support agencies shall publicize the availability of the declarations. The local

child support agency shall make the declaration, together with the written materials described in subdivision (a) of Section 7572, available upon request to any parent and any agency or organization that is required to offer parents the opportunity to sign a voluntary declaration of paternity. The local child support agency shall also provide qualified staff to answer parents' questions regarding the declaration and the process of establishing paternity.

(i) Copies of the declaration and any rescissions filed with the Department of Child Support Services shall be made available only to the parents, the child, the local child support agency, the county welfare department, the county counsel, the State Department of Health Services, and the courts.

(j) Publicly funded or licensed health clinics, pediatric offices, Head Start programs, child care centers, social services providers, prisons, and schools may offer parents the opportunity to sign a voluntary declaration of paternity. In order to be paid for their services as provided in subdivision (c), publicly funded or licensed health clinics, pediatric offices, Head Start programs, child care centers, social services providers, prisons, and schools shall ensure that the form is witnessed and forwarded to the Department of Child Support Services.

(k) Any agency or organization required to offer parents the opportunity to sign a voluntary declaration of paternity shall also identify parents who are willing to sign, but were unavailable when the child was born. The organization shall then contact these parents within 10 days and again offer the parent the opportunity to sign a voluntary declaration of paternity.

SEC. 10. Section 17212 of the Family Code is amended to read:

17212. (a) It is the intent of the Legislature to protect individual rights of privacy, and to facilitate and enhance the effectiveness of the child and spousal support enforcement program, by ensuring the confidentiality of support enforcement and child abduction records, and to thereby encourage the full and frank disclosure of information relevant to all of the following:

(1) The establishment or maintenance of parent and child relationships and support obligations.

(2) The enforcement of the child support liability of absent parents.

(3) The enforcement of spousal support liability of the spouse or former spouse to the extent required by the state plan under Section 17604 and Chapter 6 (commencing with Section 4900) of Part 5 of Division 9.

(4) The location of absent parents.

(5) The location of parents and children abducted, concealed, or detained by them.

(b) (1) Except as provided in subdivision (c), all files, applications, papers, documents, and records established or maintained by any public entity pursuant to the administration and implementation of the child and spousal support enforcement program established pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this division, shall be confidential, and shall not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program. No public entity shall disclose any file, application, paper, document, or record, or the information contained therein, except as expressly authorized by this section.

(2) In no case shall information be released or the whereabouts of one party or the child disclosed to another party, or to the attorney of any other party, if a protective order has been issued by a court or administrative agency with respect to the party, a good cause claim under Section 11477.04 of the Welfare and Institutions Code has been approved or is pending, or the public agency responsible for establishing paternity or enforcing support has reason to believe that the release of the information may result in physical or emotional harm to the party or the child. When a local child support agency is prohibited from releasing information pursuant to this subdivision, the information shall be omitted from any pleading or document to be submitted to the court and this subdivision shall be cited in the pleading or other document as the authority for the omission. The information shall be released only upon an order of the court pursuant to paragraph (6) of subdivision (c).

(3) Notwithstanding any other provision of law, a proof of service filed by the local child support agency shall not disclose the address where service of process was accomplished. Instead, the local child support agency shall keep the address in its own records. The proof of service shall specify that the address is on record at the local child support agency and that the address may be released only upon an order from the court pursuant to paragraph (6) of subdivision (c). The local child support agency shall, upon request by a party served, release to that person the address where service was effected.

(c) Disclosure of the information described in subdivision (b) is authorized as follows:

(1) All files, applications, papers, documents, and records as described in subdivision (b) shall be available and may be used by a public entity for all administrative, civil, or criminal investigations, actions, proceedings, or prosecutions conducted in connection with the administration of the child and spousal support enforcement program approved under Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and to the county welfare department responsible for administering a program operated

under a state plan pursuant to Part A, Subpart 1 or 2 of Part B, or Part E of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(2) A document requested by a person who wrote, prepared, or furnished the document may be examined by or disclosed to that person or his or her designee.

(3) The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee.

(4) Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order.

(5) Public records subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of the Government Code) may be released.

(6) After a noticed motion and a finding by the court, in a case in which establishment or enforcement actions are being taken, that release or disclosure to the obligor or obligee is required by due process of law, the court may order a public entity that possesses an application, paper, document, or record as described in subdivision (b) to make that item available to the obligor or obligee for examination or copying, or to disclose to the obligor or obligee the contents of that item. Article 9 (commencing with Section 1040) of Chapter 4 of Division 3 of the Evidence Code shall not be applicable to proceedings under this part. At any hearing of a motion filed pursuant to this section, the court shall inquire of the local child support agency and the parties appearing at the hearing if there is reason to believe that release of the requested information may result in physical or emotional harm to a party. If the court determines that harm may occur, the court shall issue any protective orders or injunctive orders restricting the use and disclosure of the information as are necessary to protect the individuals.

(7) To the extent not prohibited by federal law or regulation, information indicating the existence or imminent threat of a crime against a child, or location of a concealed, detained, or abducted child or the location of the concealing, detaining, or abducting person, may be disclosed to any district attorney, any appropriate law enforcement agency, or to any state or county child protective agency, or may be used in any judicial proceedings to prosecute that crime or to protect the child.

(8) The social security number, most recent address, and the place of employment of the absent parent may be released to an authorized person as defined in Section 653(c) of Title 42 of the United States Code, only if the authorized person has filed a request for the information, and only if the information has been provided to the California Parent Locator

Service by the federal Parent Locator Service pursuant to Section 653 of Title 42 of the United States Code.

(d) (1) ''Administration and implementation of the child and spousal support enforcement program,'' as used in this division, means the carrying out of the state and local plans for establishing, modifying, and enforcing child support obligations, enforcing spousal support orders, and determining paternity pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article.

(2) For purposes of this division, ''obligor'' means any person owing a duty of support.

(3) As used in this division, ''putative parent'' shall refer to any person reasonably believed to be the parent of a child for whom the local child support agency is attempting to establish paternity or establish, modify, or enforce support pursuant to Section 17400.

(e) Any person who willfully, knowingly, and intentionally violates this section is guilty of a misdemeanor.

(f) Nothing in this section shall be construed to compel the disclosure of information relating to a deserting parent who is a recipient of aid under a public assistance program for which federal aid is paid to this state, if that information is required to be kept confidential by the federal law or regulations relating to the program.

SEC. 11. Section 17304 of the Family Code is amended to read:

17304. To address the concerns stated by the Legislature in Section 17303, each county shall establish a new county department of child support services. Each department is also referred to in this division as the local child support agency. The local child support agency shall be separate and independent from any other county department and shall be responsible for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The local child support agency shall refer all cases requiring criminal enforcement services to the district attorney and the district attorney shall prosecute those cases, as appropriate. If a district attorney fails to comply with this section, the director shall notify the Attorney General and the Attorney General shall take appropriate action to secure compliance. The director shall be responsible for implementing and administering all aspects of the state plan that direct the functions to be performed by the local child support agencies relating to their Title IV-D operations. In developing the new system, all of the following shall apply:

(a) The director shall negotiate and enter into cooperative agreements with county and state agencies to carry out the requirements of the state

plan and provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations as required pursuant to Section 654 of Title 42 of the United States Code. The cooperative agreements shall require that the local child support agencies are reasonably accessible to the citizens of each county and are visible and accountable to the public for their activities. The director, in consultation with the impacted counties, may consolidate the local child support agencies, or any function of the agencies, in more than one county into a single local child support agency, if the director determines that the consolidation will increase the efficiency of the state Title IV-D program and each county has at least one local child support office accessible to the public.

(b) The director shall have direct oversight and supervision of the Title IV-D operations of the local child support agency, and no other local or state agency shall have any authority over the local child support agency as to any function relating to its Title IV-D operations. The local child support agency shall be responsible for the performance of child support enforcement activities required by law and regulation in a manner prescribed by the department. The administrator of the local child support agency shall be responsible for reporting to and responding to the director on all aspects of the child support program.

(c) Nothing in this section prohibits the local child support agency, with the prior approval of the director, from entering into cooperative arrangements with other county departments, as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation submitted to the department and approved by the director. The local child support agency may not enter into a cooperative agreement or contract with any county department or independently elected official, including the office of the district attorney, to run, supervise, manage, or oversee the Title IV-D functions of the local child support agency. Until September 1, 2004, the local child support agency may enter into a cooperative agreement or contract of restricted scope and duration with a district attorney to utilize individual attorneys as necessary to carry out limited attorney services. Any cooperative agreement or contract for the attorney services shall be subject to approval by the department and contingent upon a written finding by the department that either the relatively small size of the local child support agency program, or other serious programmatic needs, arising as a result of the transition make it most efficient and cost-effective to contract for limited attorney services. The department shall ensure that any cooperative agreement or contract for attorney services provides that all attorneys be supervised by, and report directly to, the local child support agency, and comply with all state and federal child support laws and regulations. The office of the Legislative Analyst shall review and assess

the efficiency and effectiveness of that cooperative agreement or contract, and shall report its findings to the Legislature by January 1, 2004. Within 60 days of receipt of a plan of cooperation or contract from the local child support agency, the department shall either approve the plan of cooperation or contract or notify the agency that the plan is denied. If an agency is notified that the plan is denied, the agency shall have the opportunity to resubmit a revised plan of cooperation or contract. If the director fails to respond in writing within 60 days of receipt, the plan shall otherwise be deemed approved. Nothing in this section shall be deemed an approval of program costs relative to the cooperative arrangements entered into by the counties with other county departments.

(d) In order to minimize the disruption of services provided and to capitalize on the expertise of employees, the director shall create a program that builds on existing staff and facilities to the fullest extent possible. All assets of the family support division in the district attorney's office shall become assets of the local child support agency.

(e) (1) (A) Except as provided in subparagraph (B), all employees and other personnel who serve the office of the district attorney and perform child support collection and enforcement activities shall become the employees and other personnel of the county child support agency at their existing or equivalent classifications, and at their existing salaries and benefits that include, but are not limited to, accrued and unused vacation, sick leave, personal leave, and health and pension plans.

(B) The Title IV-D director is entitled to become an employee of the local child support agency or may be selected as the administrator pursuant to the provisions of subdivision (f).

(2) Permanent employees of the office of the district attorney on the effective date of this chapter shall be deemed qualified, and no other qualifications shall be required for employment or retention in the county child support agency. Probationary employees on the effective date of this chapter shall retain their probationary status and rights, and shall not be deemed to have transferred, so as to require serving a new probationary period.

(3) Employment seniority of an employee of the office of the district attorney on the effective date of this chapter shall be counted toward seniority in the county child support agency and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(4) An employee organization that has been recognized as the representative or exclusive representative of an established appropriate bargaining unit of employees who perform child support collection and enforcement activities shall continue to be recognized as the

representative or exclusive representative of the same employees of the county.

(5) An existing memorandum of understanding or agreement between the county or the office of the district attorney and the employee organization shall remain in effect and be fully binding on the parties involved for the term of the agreement.

(6) Nothing in this section shall be construed to limit the rights of employees or employee organizations to bargain in good faith on matters of wages, hours, or other terms and conditions of employment, including the negotiation of workplace standards within the scope of bargaining as authorized by state and federal law.

(7) (A) Except as provided in subparagraph (B), a public agency shall, in implementing programs affected by the act of addition or amendment of this chapter to this code, perform program functions exclusively through the use of merit civil service employees of the public agency.

(B) Prior to transition from the district attorney to the local child support agency under Section 17305, the district attorney may continue existing contracts and their renewals, as appropriate. After the transition under Section 17305, any contracting out of program functions shall be approved by the director consistent with Section 31000 and following of the Government Code, except as otherwise provided in subdivision (c) with regard to attorney services. The director shall approve or disapprove a proposal to contract out within 60 days. Failure of the director to respond to a request to contract out within 60 days after receipt of the request shall be deemed approval, unless the director submits an extension to respond, which in no event shall be longer than 30 days.

(f) The administrator of the local child support agency shall be an employee of the county selected by the board of supervisors, or in the case of a city and county, selected by the mayor, pursuant to the qualifications established by the department. The administrator may hire staff, including attorneys, to fulfill the functions required by the agency and in conformity with any staffing requirements adopted by the department, including all those set forth in Section 17306. All staff shall be employees of the county and shall comply with all local, state, and federal child support laws, regulations, and directives.

SEC. 12. Section 17401 of the Family Code is amended to read:

17401. If the parent who is receiving support enforcement services provides to the local child support agency substantial, credible, information regarding the residence or work address of the support obligor, the agency shall initiate an establishment or enforcement action and serve the defendant, if service is required, within 60 days and inform the parent in writing when those actions have been taken. If the address

or any other information provided by the support obligee is determined by the local child support agency to be inaccurate and if, after reasonable diligence, the agency is unable to locate and serve the support obligor within that 60-day period, the local child support agency shall inform the support obligee in writing of those facts. The requirements of this section shall be in addition to the time standards established by the Department of Child Support Services pursuant to subdivision (*l*) of Section 17400.

SEC. 13. Section 17404 of the Family Code is amended to read:

17404. (a) Notwithstanding any other statute, in any action brought by the local child support agency for the support of a minor child or children, the action may be prosecuted in the name of the county on behalf of the child, children, or a parent of the child or children. The parent who has requested or is receiving support enforcement services of the local child support agency shall not be a necessary party to the action but may be subpoenaed as a witness. Except as provided in subdivision (e), in an action under this section there shall be no joinder of actions, or coordination of actions, or cross-complaints, and the issues shall be limited strictly to the question of parentage, if applicable, and child support, including an order for medical support. A final determination of parentage may be made in any action under this section as an incident to obtaining an order for support. An action for support or parentage pursuant to this section shall not be delayed or stayed because of the pendency of any other action between the parties.

(b) Judgment in an action brought pursuant to this section, and in an action brought pursuant to Section 17402, if at issue, may be rendered pursuant to a noticed motion, that shall inform the defendant that in order to exercise his or her right to trial, he or she must appear at the hearing on the motion.

If the defendant appears at the hearing on the motion, the court shall inquire of the defendant if he or she desires to subpoena evidence and witnesses, if parentage is at issue and genetic tests have not already been conducted whether he or she desires genetic tests, and if he or she desires a trial. If the defendant's answer is in the affirmative, a continuance shall be granted to allow the defendant to exercise those rights. A continuance shall not postpone the hearing to more than 90 days from the date of service of the motion. If a continuance is granted, the court may make an order for temporary support without prejudice to the right of the court to make an order for temporary support as otherwise allowed by law.

(c) In any action to enforce a spousal support order the action may be pled in the name of the county in the same manner as an action to establish a child support obligation. The same restrictions on joinder of actions, coordination of actions, cross-complaints, and delay because of the pendency of any other action as relates to actions to establish a child

support obligation shall also apply to actions to enforce a spousal support order.

(d) Nothing contained in this section shall be construed to prevent the parties from bringing an independent action under other provisions of this code and litigating the issues of support, custody, visitation, or protective orders. In that event, any support, custody, visitation, or protective order issued by the court in an action pursuant to this section shall be filed in the action commenced under the other provisions of this code and shall continue in effect until modified by a subsequent order of the court. To the extent that the orders conflict, the court order last issued shall supersede all other orders and be binding upon all parties in that action.

(e) (1) After a support order, including a temporary support order and an order for medical support only, has been entered in an action brought pursuant to this section, the parent who has requested or is receiving support enforcement services of the local child support agency shall become a party to the action brought pursuant to this section, only in the manner and to the extent provided by this section, and only for the purposes allowed by this section.

(2) Notice of the parent's status as a party shall be given to the parent by the local child support agency in conjunction with the notice required by subdivision (e) of Section 17406. The complaint shall contain this notice. Service of the complaint on the parent in compliance with Section 1013 of the Code of Civil Procedure, or as otherwise provided by law, shall constitute compliance with this section. In all actions commenced under the procedures and forms in effect on or before December 31, 1996, the parent who has requested or is receiving support enforcement services of the local child support agency shall not become a party to the action until he or she is joined as a party pursuant to an ex parte application or noticed motion for joinder filed by the local child support agency or a noticed motion filed by either parent. The local child support agency shall serve a copy of any order for joinder of a parent obtained by the local child support agency's application on both parents in compliance with Section 1013 of the Code of Civil Procedure.

(3) Once both parents are parties to an action brought pursuant to this section in cases where Title IV-D services are currently being provided, the local child support agency shall be required, within five days of receipt, to mail the nonmoving party in the action all pleadings relating solely to the support issue in the action that have been served on the local child support agency by the moving party in the action, as provided in subdivision (f) of Section 17406. There shall be a rebuttable presumption that service on the local child support agency consistent with the provisions of this paragraph constitutes valid service on the nonmoving party. Where this procedure is used to effectuate service on

the nonmoving party, the pleadings shall be served on the local child support agency not less than 30 days prior to the hearing.

(4) The parent who has requested or is receiving support enforcement services of the local child support agency is a party to an action brought under this section for issues relating to the support, custody, and visitation of a child, and for restraining orders, and for no other purpose. The local child support agency shall not be required to serve or receive service of papers, pleadings, or documents, or participate in, or attend any hearing or proceeding relating to issues of custody or visitation, except as otherwise required by law. Orders concerning custody and visitation may be made in an action pursuant to this subdivision only if orders concerning custody and visitation have not been previously made by a court of competent jurisdiction in this state or another state and the court has jurisdiction and is the proper venue for custody and visitation determinations. All issues regarding custody and visitation shall be heard and resolved in the manner provided by this code. Except as otherwise provided by law, the local child support agency shall control support and parentage litigation brought pursuant to this section, and the manner, method, and procedures used in establishing parentage and in establishing and enforcing support obligations unless and until the parent who requested or is receiving support enforcement services has requested in writing that the local child support agency close his or her case and the case has been closed in accordance with state and federal regulation or policy.

(f) (1) A parent who has requested or is receiving support enforcement services of the local child support agency may take independent action to modify a support order made pursuant to this section while support enforcement services are being provided by the local child support agency. The parent shall serve the local child support agency with notice of any action filed to modify the support order and provide the local child support agency with a copy of the modified order within 15 calendar days after the date the order is issued.

(2) A parent who has requested or is receiving support enforcement services of the local child support agency may take independent action to enforce a support order made pursuant to this section while support enforcement services are being provided by the local child support agency with the written consent of the local child support agency. At least 30 days prior to filing an independent enforcement action, the parent shall provide the local child support agency with written notice of the parent's intent to file an enforcement action that includes a description of the type of enforcement action the parent intends to file. Within 30 days of receiving the notice, the local child support agency shall either provide written consent for the parent to proceed with the independent enforcement action or notify the parent that the local child

support agency objects to the parent filing the proposed independent enforcement action. The local child support agency may object only if the local child support agency is currently using an administrative or judicial method to enforce the support obligation or if the proposed independent enforcement action would interfere with an investigation being conducted by the local child support agency. If the local child support agency does not respond to the parent's written notice within 30 days, the local child support agency shall be deemed to have given consent.

(3) The court shall order that all payments of support shall be made to the local child support agency in any action filed under this section by the parent who has requested, or is receiving, support enforcement services of the local child support agency unless support enforcement services have been terminated by the local child support agency by case closure as provided by state and federal law. Any order obtained by a parent prior to support enforcement services being terminated in which the local child support agency did not receive proper notice pursuant to this section shall be voidable upon the motion of the local child support agency.

(g) Any notice from the local child support agency requesting a meeting with the support obligor for any purpose authorized under this section shall contain a statement advising the support obligor of his or her right to have an attorney present at the meeting.

(h) For the purpose of this section, ''a parent who is receiving support enforcement services'' includes a parent who has assigned his or her rights to support pursuant to Section 11477 of the Welfare and Institutions Code.

(i) The Judicial Council shall develop forms to implement this section.

SEC. 14. Section 17520 of the Family Code is amended to read:

17520. (a) As used in this section:

(1) ''Applicant'' means any person applying for issuance or renewal of a license.

(2) ''Board'' means any entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Department of Real Estate, the Department of Motor Vehicles, the Secretary of State, the Department of Fish and Game, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, or to the extent required by federal law or regulations, for recreational purposes. This term includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate,

credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession does not exclude that board, commission, department, committee, examiner, entity, or agency from this term.

(3) ''Certified list'' means a list provided by the local child support agency to the Department of Child Support Services in which the local child support agency verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the Social Security Act.

(4) ''Compliance with a judgment or order for support'' means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The local child support agency is authorized to use this section to enforce orders for spousal support only when the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 17400 and 17604.

(5) ''License'' includes membership in the State Bar, and a certificate, credential, permit, registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. ''License'' also includes any driver's license issued by the Department of Motor Vehicles, any commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any license used for recreational purposes. This term includes all licenses, certificates, credentials, permits, registrations, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession. The failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board that allows a person to engage in a business, occupation, or profession, does not exclude that license, certificate, credential, permit, registration, or other authorization from this term.

(6) ''Licensee'' means any person holding a license, certificate, credential, permit, registration, or other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver's license as defined in Section 15210 of the Vehicle Code, including an appointment and commission by the Secretary of State as a notary public. ''Licensee'' also means any person holding a driver's license issued by the Department of Motor Vehicles, any person holding a commercial fishing license issued by the Department of Fish and Game, and to the extent required by federal law or regulations, any person holding a license used for recreational purposes. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term. For licenses issued to an entity that is not an individual person, ''licensee'' includes any individual who is either listed on the license or who qualifies for the license.

(b) The local child support agency shall maintain a list of those persons included in a case being enforced under Title IV-D of the Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The local child support agency shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the list to the department. The local child support agency shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The local child support agency shall submit to the department an updated certified list on a monthly basis.

(c) The department shall consolidate the certified lists received from the local child support agencies and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board that is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the department, all boards subject to this section shall implement procedures to accept and process the list provided by the department, in accordance with this section. Notwithstanding any other law, all boards shall collect social security numbers from all applicants for the purposes of matching the names of the certified list provided by the department to applicants and licensees

and of responding to requests for this information made by child support agencies.

(e) (1) Promptly after receiving the certified consolidated list from the department, and prior to the issuance or renewal of a license, each board shall determine whether the applicant is on the most recent certified consolidated list provided by the department. The board shall have the authority to withhold issuance or renewal of the license of any applicant on the list.

(2) If an applicant is on the list, the board shall immediately serve notice as specified in subdivision (f) on the applicant of the board's intent to withhold issuance or renewal of the license. The notice shall be made personally or by mail to the applicant's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(A) The board shall issue a temporary license valid for a period of 150 days to any applicant whose name is on the certified list if the applicant is otherwise eligible for a license.

(B) Except as provided in subparagraph (D), the 150-day time period for a temporary license shall not be extended. Except as provided in subparagraph (D), only one temporary license shall be issued during a regular license term and it shall coincide with the first 150 days of that license term. As this paragraph applies to commercial driver's licenses, ''license term'' shall be deemed to be 12 months from the date the application fee is received by the Department of Motor Vehicles. A license for the full or remainder of the license term shall be issued or renewed only upon compliance with this section.

(C) In the event that a license or application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board.

(D) This paragraph shall apply only in the case of a driver's license, other than a commercial driver's license. Upon the request of the local child support agency or by order of the court upon a showing of good cause, the board shall extend a 150-day temporary license for a period not to exceed 150 extra days.

(3) (A) The department may, when it is economically feasible for the department and the boards to do so as determined by the department, in cases where the department is aware that certain child support obligors listed on the certified lists have been out of compliance with a judgment or order for support for more than four months, provide a supplemental list of these obligors to each board with which the department has an interagency agreement to implement this paragraph. Upon request by the department, the licenses of these obligors shall be subject to suspension, provided that the licenses would not otherwise be eligible for renewal within six months from the date of the request by the department. The

board shall have the authority to suspend the license of any licensee on this supplemental list.

(B) If a licensee is on a supplemental list, the board shall immediately serve notice as specified in subdivision (f) on the licensee that his or her license will be automatically suspended 150 days after notice is served, unless compliance with this section is achieved. The notice shall be made personally or by mail to the licensee's last known mailing address on file with the board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil Procedure.

(C) The 150-day notice period shall not be extended.

(D) In the event that any license is suspended pursuant to this section, any funds paid by the licensee shall not be refunded by the board.

(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.

(f) Notices shall be developed by each board in accordance with guidelines provided by the department and subject to approval by the department. The notice shall include the address and telephone number of the local child support agency that submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that local child support agency as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the local child support agency that submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the local child support agency that submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The Department of Child Support Services shall also develop a form that the applicant shall use to request a review by the local child

support agency. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g) (1) Each local child support agency shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(2) It is the intent of the Legislature that a court or local child support agency, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in reaching its decision, the court or the local child support agency shall consider both of these goals in setting a payment schedule for arrearages.

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review to the local child support agency who certified the applicant's name. A request for review pursuant to this section shall be resolved in the same manner and timeframe provided for resolution of a complaint pursuant to Section 17800. The local child support agency shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the local child support agency for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the local child support agency will be unable to complete the review and send notice of its findings to the applicant within the time specified in Section 17800.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the local child support agency's notice of findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the local child support agency with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the local child

support agency and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the local child support agency to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the local child support agency shall not issue a release if the applicant is not in compliance with the judgment or order for support. The local child support agency shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

(1) Judicial review of the local child support agency's decision not to issue a release.

(2) A judicial determination of compliance.

(3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion.

Nothing in this section shall be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the local child support agency's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the local child support agency's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with the judgment or order of support.

(4) (A) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of

both the obligor and the obligee, warrant a conditional release as described in this subdivision.

(B) The request for judicial review shall be served by the applicant upon the local child support agency that submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

(C) If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the local child support agency shall immediately send a release in accordance with subdivision (*l*) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect.

(*l*) The department shall prescribe release forms for use by local child support agencies. When the obligor is in compliance, the local child support agency shall mail to the applicant and the appropriate board a release stating that the applicant is in compliance. The receipt of a release shall serve to notify the applicant and the board that, for the purposes of this section, the applicant is in compliance with the judgment or order for support. Any board that has received a release from the local child support agency pursuant to this subdivision shall process the release within five business days of its receipt.

If the local child support agency determines subsequent to the issuance of a release that the applicant is once again not in compliance with a judgment or order for support, or with the terms of repayment as described in this subdivision, the local child support agency may notify the board, the obligor, and the department in a format prescribed by the department that the obligor is not in compliance.

The department may, when it is economically feasible for the department and the boards to develop an automated process for complying with this subdivision, notify the boards in a manner prescribed by the department, that the obligor is once again not in compliance. Upon receipt of this notice, the board shall immediately notify the obligor on a form prescribed by the department that the obligor's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The obligor shall be further notified that the license will remain suspended until a new release is issued in accordance with subdivision (h). Nothing in this

section shall be deemed to limit the obligor from seeking judicial review of suspension pursuant to the procedures described in subdivision (k).

(m) The department may enter into interagency agreements with the state agencies that have responsibility for the administration of boards necessary to implement this section, to the extent that it is cost-effective to implement this section. These agreements shall provide for the receipt by the other state agencies and boards of federal funds to cover that portion of costs allowable in federal law and regulation and incurred by the state agencies and boards in implementing this section. Notwithstanding any other provision of law, revenue generated by a board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this section. These agreements shall provide that boards shall reimburse the department for the nonfederal share of costs incurred by the department in implementing this section. The boards shall reimburse the department for the nonfederal share of costs incurred pursuant to this section from moneys collected from applicants and licensees.

(n) Notwithstanding any other provision of law, in order for the boards subject to this section to be reimbursed for the costs incurred in administering its provisions, the boards may, with the approval of the appropriate department director, levy on all licensees and applicants a surcharge on any fee or fees collected pursuant to law, or, alternatively, with the approval of the appropriate department director, levy on the applicants or licensees named on a certified list or supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

(1) The number of delinquent obligors certified by district attorneys under this section.

(2) The number of support obligors who also were applicants or licensees subject to this section.

(3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.

(4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The department and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (*l*).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the department and the Franchise Tax Board that will require the department and the Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost-effective and permitted by the Revenue and Taxation Code.

(w) (1) The suspension or revocation of any driver's license, including a commercial driver's license, under this section shall not subject the licensee to vehicle impoundment pursuant to Section 14602.6 of the Vehicle Code.

(2) Notwithstanding any other provision of law, the suspension or revocation of any driver's license, including a commercial driver's

license, under this section shall not subject the licensee to increased costs for vehicle liability insurance.

(x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee.

SEC. 15. Section 17522 of the Family Code is amended to read:

17522. (a) Notwithstanding any other law, if any support obligor is delinquent in the payment of support for at least 30 days and the local child support agency is enforcing the support obligation pursuant to Section 17400, the local child support agency may collect the delinquency or enforce any lien by levy served on all persons having in their possession, or who will have in their possession or under their control, any credits or personal property belonging to the delinquent support obligor, or who owe any debt to the obligor at the time they receive the notice of levy.

(b) A levy may be issued by a local child support agency for a support obligation that accrued under a court order or judgment if the obligor had notice of the accrued support arrearage as provided in this section, and did not make a timely request for review.

(c) The notice requirement shall be satisfied by the local child support agency sending a statement of support arrearages to the obligor at the obligor's last known address by first-class mail, postage prepaid. The notice shall advise the obligor of the amount of the support arrearage. The notice shall advise the obligor that the obligor may have the arrearage determination reviewed by administrative procedures and state how the review may be obtained. The local child support agency shall conduct the review pursuant to this section in the same manner and timeframe provided for resolution of a complaint pursuant to Section 17800. The notice shall also advise the obligor of his or her right to seek a judicial determination of arrearages pursuant to Section 17526 and shall include a form to be filed with the court to request a judicial determination of arrearages. If the obligor requests an administrative review of the arrearage determination within 20 days from the date the notice was mailed to the obligor, the local child support agency may not issue the levy for a disputed amount of support until the administrative review procedure is completed.

(d) If the obligor requests a judicial determination of the arrearages within 20 days from the date the notice was mailed to the obligor, the local child support agency shall not issue the levy for a disputed amount of support until the judicial determination is complete.

(e) Any person upon whom a levy has been served having in his or her possession or under his or her control any credits or personal property belonging to the delinquent support obligor or owing any debts to the delinquent support obligor at the time of receipt of the levy or coming into his or her possession or under his or her control within one year of receipt of the notice of levy, shall surrender the credits or personal property to the local child support agency or pay to the local child support agency the amount of any debt owing the delinquent support obligor within 10 days of service of the levy, and shall surrender the credits or personal property, or the amount of any debt owing to the delinquent support obligor coming into his or her own possession or control within one year of receipt of the notice of levy within 10 days of the date of coming into possession or control of the credits or personal property or the amount of any debt owing to the delinquent support obligor.

(f) Any person who surrenders any credits or personal property or pays the debts owing the delinquent support obligor to the local child support agency pursuant to this section shall be discharged from any obligation or liability to the delinquent support obligor to the extent of the amount paid to the local child support agency as a result of the levy.

(g) If the levy is made on a deposit or credits or personal property in the possession or under the control of a bank, savings and loan association, or other financial institution as defined by Section 669A(d)(1) of Title 42 of the United States Code, the notice of levy may be delivered or mailed to a centralized location designated by the bank, savings and loan association, or other financial institution pursuant to Section 689.040 of the Code of Civil Procedure.

(h) Any person who is served with a levy pursuant to this section and who fails or refuses to surrender any credits or other personal property or pay any debts owing to the delinquent support obligor shall be liable in his or her own person or estate to the local child support agency in an amount equal to the value of the credits or other personal property or in the amount of the levy, up to the amount specified in the levy.

(i) If any amount required to be paid pursuant to a levy under this section is not paid when due, the local child support agency may issue a warrant for enforcement of any lien and for the collection of any amount required to be paid to the local child support agency under this section. The warrant shall be directed to any sheriff, marshal, or the Department of the California Highway Patrol and shall have the same force and effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the manner and with the same force and effect as a levy and sale pursuant to a writ of execution. The local child support agency may pay or advance to the levying officer the same fees, commissions, and expenses for his or her services under this section as

are provided by law for similar services pursuant to a writ of execution, except for those fees and expenses for which a district attorney is exempt by law from paying. The local child support agency, and not the court, shall approve the fees for publication in a newspaper.

(j) The fees, commissions, expenses, and the reasonable costs associated with the sale of property levied upon by warrant or levy pursuant to this section, including, but not limited to, appraisers' fees, auctioneers' fees, and advertising fees are an obligation of the support obligor and may be collected from the obligor by virtue of the warrant or levy or in any other manner as though these items were support payments delinquent for at least 30 days.

SEC. 16. Section 17525 of the Family Code is amended to read:

17525. (a) Whenever a state or local governmental agency issues a notice of support delinquency, the notice shall state the date upon which the amount of the delinquency was calculated, and shall notify the obligor that the amount calculated may, or may not, include accrued interest. This requirement shall not be imposed until the local child support agency has instituted the California Child Support Automation System defined in Section 10081 of the Welfare and Institutions Code. The notice shall further notify the obligor of his or her right to an administrative determination of arrears by requesting that the local child support agency review the arrears, but that payments on arrears continue to be due and payable unless and until the local child support agency notifies the obligor otherwise. A state agency shall not be required to suspend enforcement of any arrearages as a result of the obligor's request for an administrative determination of arrears, unless the agency receives notification of a suspension pursuant to subdivision (b) of Section 17526.

(b) For purposes of this section, ''notice of support delinquency'' means a notice issued to a support obligor that includes a specific statement of the amount of delinquent support due and payable.

(c) This section shall not require a state or local entity to calculate the amount of a support delinquency, except as otherwise required by law.

SEC. 17. Section 17526 of the Family Code is amended to read:

17526. (a) Upon request of an obligor or obligee, the local child support agency shall review the amount of arrearages alleged in a statement of arrearages that may be submitted to the local child support agency by an applicant for child support enforcement services. The local child support agency shall complete the review in the same manner and pursuant to the same timeframes as a complaint submitted pursuant to Section 17800. In the review, the local child support agency shall consider all evidence and defenses submitted by either parent on the issues of the amount of support paid or owed.

(b) The local child support agency may, in its discretion, suspend enforcement or distribution of arrearages if it believes there is a substantial probability that the result of the administrative review will result in a finding that there are no arrearages.

(c) Any party to an action involving child support enforcement services of the local child support agency may request a judicial determination of arrearages. The party may request an administrative review of the alleged arrearages prior to requesting a judicial determination of arrearages. Any motion to determine arrearages filed with the court shall include a monthly breakdown showing amounts ordered and amounts paid, in addition to any other relevant information.

(d) A county that submits a claim for reimbursement as a state-mandated local program of costs incurred with respect to the administrative review of alleged child support arrearages under this section shall be ineligible for state subventions or, to the extent permitted by federal law, state-administered federal subventions, for child support in the amount of any local costs under this section.

SEC. 18. Section 17530 of the Family Code is amended to read:

17530. (a) Notwithstanding any other provision of law, this section shall apply to any actions taken to enforce a judgment or order for support entered as a result of action filed by the local child support agency pursuant to Section 17400, 17402, or 17404, where it is alleged that the enforcement actions have been taken in error against a person who is not the support obligor named in the judgment or order.

(b) Any person claiming that any support enforcement actions have been taken against that person, or his or her wages or assets, in error, shall file a claim of mistaken identity with the local child support agency. The claim shall include verifiable information or documentation to establish that the person against whom the enforcement actions have been taken is not the person named in the support order or judgment. The local child support agency shall resolve a claim of mistaken identity submitted pursuant to this section in the same manner and time frames provided for resolution of a complaint pursuant to Section 17800.

(c) If the local child support agency determines that a claim filed pursuant to this section is meritorious, or if the court enters an order pursuant to Section 17433, the agency shall immediately take the steps necessary to terminate all enforcement activities with respect to the claimant, to return to the claimant any assets seized, to terminate any levying activities or attachment or assignment orders, to release any license renewal or application being withheld pursuant to Section 17520, to return any sums paid by the claimant pursuant to the judgment or order, including sums paid to any federal, state, or local government, but excluding sums paid directly to the support obligee, and to ensure that all other enforcement agencies and entities cease further actions

against the claimant. With respect to a claim filed under this section, the local child support agency shall also provide the claimant with a statement certifying that the claimant is not the support obligor named in the support order or judgment, which statement shall be prima facie evidence of the claimant's identity in any subsequent enforcement proceedings or actions with respect to that support order or judgment.

(d) If the local child support agency rejects a claim pursuant to this section, or if the agency, after finding a claim to be meritorious, fails to take any of the remedial steps provided in subdivision (c), the claimant may file an action with the superior court to establish his or her mistaken identity or to obtain the remedies described in subdivision (c), or both.

(e) Filing a false claim pursuant to this section shall be a misdemeanor.

(f) This section shall become operative on April 1, 2000.

SEC. 19. Section 17708 of the Family Code is amended to read:

17708. (a) This section shall apply to any county that elects to participate in the state incentive program described in Section 17704.

(b) Each participating county child support enforcement program shall provide the data required by Section 17600 to the department on a quarterly basis. The data shall be provided no later than 15 days after the end of each quarter.

(c) On and after July 1, 1998, a county shall be required to comply with the provisions of this section only during fiscal years in which funding is provided for that purpose in the Budget Act.

SEC. 20. Section 17714 of the Family Code is amended to read:

17714. (a) (1) Any funds paid to a county pursuant to this chapter prior to June 30, 1999, which exceed the county's cost of administering the child support program of the local child support agency pursuant to Section 17400 to that date, hereafter referred to as "excess funds," shall be expended by the county only upon that program. All these excess funds shall be deposited by the county into a special fund established by the county for this purpose.

(2) Performance incentive funds shall include, but not be limited to, incentive funds paid pursuant to Section 17704, and performance incentive funds paid pursuant to Section 14124.93 of the Welfare and Institutions Code and all interest earned on deposits in the special fund. Performance incentive funds shall not include funds paid pursuant to Section 17706. Performance incentive funds shall be expended by the county only upon that program. All performance incentive funds shall be deposited by the county into a special fund established by the county for this purpose.

(b) All excess funds and performance incentive funds shall be expended by the county on the support enforcement program of the local child support agency within two fiscal years following the fiscal year of

receipt of the funds by the county. Except as provided in subdivision (c), any excess funds or performance incentive funds paid pursuant to this chapter since July 1, 1992, that the department determines have not been spent within the required two-year period shall revert to the state General Fund, and shall be distributed by the department only to counties that have complied with this section. The formula for distribution shall be based on the number of CalWORKs cases within each county.

(c) A county that submits to the department a written plan approved by that county's local child support agency for the expenditure of excess funds or performance incentive funds shall be exempted from the requirements of subdivision (b), if the department determines that the expenditure will be cost-effective, will maximize federal funds, and the expenditure plan will require more than the time provided for in subdivision (b) to expend the funds. Once the department approves a plan pursuant to this subdivision, funds received by a county and designated for an expenditure in the plan shall not be expended by the county for any other purpose.

(d) Nothing in this section shall be construed to nullify the recovery and reversion to the General Fund of unspent incentive funds as provided in Section 6 of Chapter 479 of the Statutes of 1999.

SEC. 21. Section 17800 of the Family Code is amended to read:

17800. Each local child support agency shall maintain a complaint resolution process. The department shall specify by regulation, no later than July 1, 2001, uniform forms and procedures that each local child support agency shall use in resolving all complaints received from custodial and noncustodial parents. A complaint shall be made within 90 days after the custodial or noncustodial parent affected knew or should have known of the child support action complained of. The local child support agency shall provide a written resolution of the complaint within 30 days of the receipt of the complaint. The director of the local child support agency may extend the period for resolution of the complaint an additional 30 days in accordance with the regulations adopted pursuant to Section 17804.

SEC. 22. Section 17804 of the Family Code is amended to read:

17804. Each local child support agency shall establish the complaint resolution process specified in Section 17800. The department shall implement the state hearing requirements specified in Section 17801 no later than July 1, 2001.

SEC. 23. Section 903.45 of the Welfare and Institutions Code is amended to read:

903.45. (a) The board of supervisors may designate a county financial evaluation officer pursuant to Section 27750 of the Government Code to make financial evaluations of parental liability for reimbursement pursuant to Sections 207.2, 903, 903.1, 903.2, 903.25,

903.3, and 903.5 and other reimbursable costs allowed by law, as set forth in this section.

(b) In any county where a board of supervisors has designated a county financial evaluation officer, the juvenile court shall, at the close of the disposition hearing, order any person liable for the cost of support, pursuant to Section 903, the cost of legal services as provided for in Section 903.1 or probation costs as provided for in Section 903.2, or any other reimbursable costs allowed under this code, to appear before the financial evaluation officer for a financial evaluation of his or her ability to pay those costs; and if the responsible person is not present at the disposition hearing, the court shall cite him or her to appear for such a financial evaluation. In the case of a parent, guardian, or other person assessed for the costs of transport, food, shelter, or care of a minor under Section 207.2 or 903.25, the juvenile court shall, upon request of the county probation department, order the appearance of the parent, guardian, or other person before the financial evaluation officer for a financial evaluation of his or her ability to pay the costs assessed.

If the county financial evaluation officer determines that a person so responsible has the ability to pay all or part of the costs, the county financial evaluation officer shall petition the court for an order requiring the person to pay that sum to the county. In evaluating a person's ability to pay under this section, the county financial evaluation officer and the court shall take into consideration the family's income, the necessary obligations of the family, and the number of persons dependent upon this income. Any person appearing for a financial evaluation shall have the right to dispute the county financial evaluation officer's determination, in which case he or she shall be entitled to a hearing before the juvenile court. The county financial evaluation officer at the time of the financial evaluation shall advise such a person of his or her right to a hearing and of his or her rights pursuant to subdivision (c).

At the hearing, any person so responsible for costs 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, to confront and cross-examine adverse witnesses, to disclosure of the evidence against him or her, and to receive a written statement of the findings of the court. The person shall have the right to be represented by counsel, and, when the person is unable to afford counsel, the right to appointed counsel. If the court determines that the person has the ability to pay all or part of the costs, including the costs of any counsel appointed to represent the person at the hearing, the court shall set the amount to be reimbursed and order him or her to pay that sum to the county in a manner in which the court believes reasonable and compatible with the person's financial ability.

If the person or persons, after having been ordered to appear before the county financial evaluation officer, have been given proper notice and fail to appear as ordered, the county financial evaluation officer shall recommend to the court that he, she, or they be ordered to pay the full amount of the costs. Proper notice to him, her, or them shall contain all of the following:

(1) That he, she, or they have a right to a statement of the costs as soon as it is available.

(2) His, her, or their procedural rights under Section 27755 of the Government Code.

(3) The time limit within which his, her, or their appearance is required.

(4) A warning that if he, she, or they fail to appear before the county financial evaluation officer, the officer will recommend that the court order him, her, or them to pay the costs in full.

If the county financial evaluation officer determines that the person or persons have the ability to pay all or a portion of these costs, with or without terms, and he, she, or they concur in this determination and agree to the terms of payments, the county financial evaluation officer, upon his or her written evaluation and the person's or persons' written agreement, shall petition the court for an order requiring him, her, or them to pay that sum to the county in a manner which is reasonable and compatible with his, her, or their financial ability. This order may be granted without further notice to the person or persons, provided a copy of the order is served on him, her, or them by mail.

However, if the county financial evaluation officer cannot reach an agreement with the person or persons with respect to either the liability for the costs, the amount of the costs, his, her, or their ability to pay the same, or the terms of payment, the matter shall be deemed in dispute and referred by the county financial evaluation officer back to the court for a hearing.

(c) At any time prior to the satisfaction of a judgment entered pursuant to this section, a person against whom the judgment was entered may petition the rendering court to modify or vacate the judgment on the basis of a change in circumstances relating to his or her ability to pay the judgment.

(d) Execution may be issued on the order in the same manner as on a judgment in a civil action, including any balance remaining unpaid at the termination of the court's jurisdiction over the minor.

SEC. 24. Section 903.5 of the Welfare and Institutions Code is amended to read:

903.5. In addition to the requirements of Section 903.4, and notwithstanding any other provision of law, the parent or other person legally liable for the support of a minor, who voluntarily places the minor

in 24-hour out-of-home care, shall be liable for the cost of the minor's care, support, and maintenance when the minor receives Aid to Families with Dependent Children-Foster Care (AFDC-FC), Supplemental Security Income-State Supplementary Program (SSI-SSP), or county-only funds. As used in this section ''parent'' includes any person specified in Section 903. Whenever the county welfare department or the placing agency determines that a court order would be advisable and effective, the department or the agency shall notify the local child support agency, or the financial evaluation officer designated pursuant to Section 903.45, who shall proceed pursuant to Section 903.4 or 903.45.

SEC. 25. Section 903.7 of the Welfare and Institutions Code is amended to read:

903.7. (a) There is in the State Treasury the Foster Children and Parent Training Fund, the moneys contained in which shall be used exclusively for the purposes set forth in this section.

(b) For each fiscal year beginning with fiscal year 1981–82, except as provided in Sections 15200.1, 15200.2, 15200.3, 15200.8, and 15200.81, and Section 17704 of the Family Code, the Department of Child Support Services shall determine the amount equivalent to the state share of collections attributable to the enforcement of parental fiscal liability pursuant to Sections 903, 903.4, and 903.5. On July 1, 1982, and every three months thereafter, the department shall notify the Chancellor of the Community Colleges, the Department of Finance, and the Superintendent of Public Instruction of the above-specified amount. The Department of Child Support Services shall authorize the quarterly transfer of any portion of this amount for any particular fiscal year exceeding three million seven hundred fifty thousand dollars ($3,750,000) to the Treasurer for deposit in the Foster Children and Parent Training Fund.

(c) If sufficient moneys are available in the Foster Children and Parent Training Fund, up to three million dollars ($3,000,000) shall be allocated for the support of foster parent training programs conducted in community colleges. The maximum amount authorized to be allocated pursuant to this subdivision shall be adjusted annually by a cost-of-living increase each year based on the percentage given to discretionary education programs. Funds for the training program shall be provided in a separate budget item in that portion of the Budget Act pertaining to the Chancellor of the California Community Colleges, to be deposited in a separate bank account by the Chancellor of the California Community Colleges.

The chancellor shall use these funds exclusively for foster parent training, as specified by the chancellor in consultation with the

California State Foster Parents Association and the State Department of Social Services.

The plans for each foster parent training program shall include the provision of training to facilitate the development of foster family homes and small family homes to care for no more than six children who have special mental, emotional, developmental, or physical needs.

The State Department of Social Services shall facilitate the participation of county welfare departments in the foster parent training program. The California State Foster Parents Association, or the local chapters thereof, and the State Department of Social Services shall identify training participants and shall advise the chancellor on the form, content, and methodology of the training program. Funds shall be paid monthly to the foster parent training program until the maximum amount of funds authorized to be expended for that program is expended. No more than 10 percent or seventy-five thousand dollars ($75,000) of these moneys, whichever is greater, shall be used for administrative purposes; of the 10 percent or seventy-five thousand dollars ($75,000), no more than ten thousand dollars ($10,000) shall be expended to reimburse the State Department of Social Services for its services pursuant to this paragraph.

(d) Beginning with fiscal year 1983–84, and each fiscal year thereafter, after all allocations for foster parent training in community colleges have been made, any moneys remaining in the Foster Children and Parent Training Fund may be allocated for foster children services programs pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24 of the Education Code.

(e) The Controller shall transfer moneys from the Foster Children and Parent Training Fund to the Chancellor of the California Community Colleges and the Superintendent of Public Instruction as necessary to fulfill the requirements of subdivisions (c) and (d).

After the maximum amount authorized in any fiscal year has been transferred to the Chancellor of the California Community Colleges and the Superintendent of Public Instruction, the Controller shall transfer any remaining funds to the General Fund for expenditure for any public purpose.

SEC. 26. Section 10081 of the Welfare and Institutions Code is amended to read:

10081. The definitions contained in this section shall govern the construction of this chapter, unless the context requires otherwise:

(a) ''Annual automation cooperation agreement'' or ''AACA'' means an agreement between a county and the department, developed in consultation with the Franchise Tax Board, that specifies the responsibilities, activities, milestones, and consequences in regard to automation and that provides the authority for the department to pass

through automation funding to the counties. The AACA shall be incorporated into the cooperative agreement between the department and the county, as described in subdivision (a) of Section 17304 of the Family Code.

(b) ''California Child Support Automation System'' means a single automated child support system operative in all California counties and includes the State Case Registry, the State Disbursement Unit, and all other necessary data bases and interfaces.

(c) ''Consortia'' means one or more counties that have entered into an agreement to jointly use and maintain a common automated child support system.

(d) ''Department'' means the state agency designated as the single state agency responsible for operating the child support enforcement program.

(e) ''Director'' means the director of the state agency designated as the single state agency responsible for operating the child support enforcement program.

(f) ''Local child support agency'' means the county department established pursuant to Section 17304 of the Family Code.

(g) ''Work plan'' means a comprehensive document developed by a county that is used to manage its activities toward statewide automation. The work plan shall include, but not be limited to, all tasks, timelines, resources, and critical milestones necessary to complete the county's project responsibilities and any other provision specified by the department.

SEC. 27. Section 10084 of the Welfare and Institutions Code is amended to read:

10084. (a) The department shall be responsible for requiring each local child support agency to cooperate in establishing the California Child Support Automation System in every county. This requirement shall include taking steps necessary to facilitate the transition from interim systems to the California Child Support Automation System, including those modifications to current systems as the department may require in subdivision (d) of Section 10082.

(b) The department shall require each local child support agency to enter into an annual automation cooperation agreement (AACA) with the department. The department, in consultation with the Franchise Tax Board, shall specify the terms of the agreement.

(c) Each local child support agency shall develop and submit a work plan to the department by the dates specified by the department in the AACA.

(d) If the AACA needs to be amended due to a change in state or federal law, regulations, or policy, each local child support agency must enter into an amended AACA as required by the department.

(e) A local child support agency shall not receive any state General Fund moneys or federal funds for child support automation efforts for any period in which the department has found that the local child support agency has failed to do any of the following:

(1) Enter into an AACA.

(2) Develop, submit, or comply with their work plan.

(3) Enter into an amended AACA when required by the department.

(4) Comply with any other provision of the AACA.

(f) The department shall establish a process whereby a county that has had state or federal funds withheld pursuant to this section may appeal the department's decision.

SEC. 28. Section 11457 of the Welfare and Institutions Code is amended to read:

11457. (a) Money from noncustodial parents for child or spousal support with respect to whom an assignment under Section 11477 has been made shall be paid directly to the local child support agency and shall not be paid directly to the family. Absent parent support payments, when collected by or paid through any public officer or agency, shall be transmitted to the county department providing aid under this chapter until a procedure is established under subdivision (b).

(b) The Department of Child Support Services, by regulation, shall work in conjunction with the California State Association of Counties, the County Welfare Director's Association, the Child Support Director's Association, and other pertinent stakeholders to establish procedures not in conflict with federal law, for the collection and distribution of noncustodial parent support payments.

(c) If an amount collected as child or spousal support represents payment on the required support obligation for future months, the amount shall be applied to such future months. However, no such amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under subdivision (a) of Section 11477 for the current months and all past months.

SEC. 29. 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. 30. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

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

To ensure immediate implementation of provisions clarifying procedures for the enforcement of child support, it is necessary that this act take effect immediately.

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## CHAPTER 756

An act to amend Sections 831.8 and 831.9 of the Government Code, relating to liability.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 831.8 of the Government Code is amended to read:

831.8. (a) Subject to subdivisions (d) and (e), neither a public entity nor a public employee is liable under this chapter for an injury caused by the condition of a reservoir if at the time of the injury the person injured was using the property for any purpose other than that for which the public entity intended or permitted the property to be used.

(b) Subject to subdivisions (d) and (e), neither an irrigation district nor an employee thereof nor the state nor a state employee is liable under this chapter for an injury caused by the condition of canals, conduits or drains used for the distribution of water if at the time of the injury the person injured was using the property for any purpose other than that for which the district or state intended it to be used.

(c) Subject to subdivisions (d) and (e), neither a public agency operating flood control and water conservation facilities nor its employees are liable under this chapter for an injury caused by the condition or use of unlined flood control channels or adjacent groundwater recharge spreading grounds if, at the time of the injury, the person injured was using the property for any purpose other than that for which the public entity intended it to be used, and, if all of the following conditions are met:

(1) The public agency operates and maintains dams, pipes, channels, and appurtenant facilities to provide flood control protection and water conservation for a county whose population exceeds nine million residents.

(2) The public agency operates facilities to recharge a groundwater basin system which is the primary water supply for more than one million residents.

(3) The groundwater supply is dependent on imported water recharge which must be conducted in accordance with court-imposed basin management restrictions.

(4) The basin recharge activities allow the conservation and storage of both local and imported water supplies when these waters are available.

(5) The public agency posts conspicuous signs warning of any increase in waterflow levels of an unlined flood control channel or any spreading ground receiving water.

(d) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if all of the following occur:

(1) The injured person was not guilty of a criminal offense under Article 1 (commencing with Section 552) of Chapter 12 of Title 13 of Part 1 of the Penal Code in entering on or using the property.

(2) The condition created a substantial and unreasonable risk of death or serious bodily harm when the property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used.

(3) The dangerous character of the condition was not reasonably apparent to, and would not have been anticipated by, a mature, reasonable person using the property with due care.

(4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

(e) Nothing in this section exonerates a public entity or a public employee from liability for injury proximately caused by a dangerous condition of property if all of the following occur:

(1) The person injured was less than 12 years of age.

(2) The dangerous condition created a substantial and unreasonable risk of death or serious bodily harm to children under 12 years of age using the property or adjacent property with due care in a manner in which it was reasonably foreseeable that it would be used.

(3) The person injured, because of his or her immaturity, did not discover the condition or did not appreciate its dangerous character.

(4) The public entity or the public employee had actual knowledge of the condition and knew or should have known of its dangerous character a sufficient time prior to the injury to have taken measures to protect against the condition.

(f) Subdivision (c) shall become inoperative on and after January 1, 2007.

SEC. 2. Section 831.9 of the Government Code is amended to read:

831.9. (a) The County of Los Angeles Department of Public Works shall maintain a record of all known or reported injuries incurred by the public in the unlined flood control channels or adjacent groundwater recharge spreading grounds during the activities of groundwater recharge. The County of Los Angeles Department of Public Works shall also maintain a record of all claims, paid and not paid, including any civil actions or proceedings and their results, arising from those incidents, that were filed against the county. Copies of these records shall be filed annually, no later than January 1 of each year, with the Judicial Council, which shall then submit a report to the Legislature on or before January 31, 2006, on the incidences of injuries incurred, claims asserted, and the results of any civil action or proceeding filed, by persons injured at these facilities.

(b) 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. 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 6 of Article XIII B of the California Constitution.

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## CHAPTER 757

An act to amend Sections 301 and 426 of the Streets and Highways Code, relating to highways.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 301 of the Streets and Highways Code is amended to read:

301. Route 1 is from:

(a) Route 5 south of San Juan Capistrano to Route 101 near El Rio.

(b) Route 101 at Emma Wood State Beach, 1.3 miles north of Route 33, to Route 101, 2.8 miles south of the Ventura-Santa Barbara county line at Mobil Pier Undercrossing.

(c) Route 101 near Las Cruces to Route 101 in Pismo Beach via the vicinity of Lompoc, Vandenberg Air Force Base, and Guadalupe.

(d) Route 101 in San Luis Obispo to Route 280 south of San Francisco along the coast via Cambria, San Simeon, and Santa Cruz.

(e) Route 280 near the south boundary of the City and County of San Francisco to Route 101 near the approach to the Golden Gate Bridge in San Francisco.

(f) Route 101 near the southerly end of Marin Peninsula to Route 101 near Leggett via the coast route through Jenner and Westport.

(g) (1) The commission may relinquish to the City of Dana Point, the portion of Route 1 that is located within the city limits of that city and is between the western edge of the San Juan Creek channel overcrossing and the city limits of the City of Laguna Beach, upon terms and conditions the commission finds to be in the best interests of the state, if the commission and the city enter into an agreement providing for that relinquishment.

(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.

(3) On and after the effective date of the relinquishment, that portion of Route 1 so relinquished shall cease to be a state highway.

(4) For portions of Route 1 that are relinquished under this subdivision, the City of Dana Point shall maintain within its jurisdiction signs directing motorists to the continuation of Route 1.

SEC. 2. Section 426 of the Streets and Highways Code is amended to read:

426. (a) Route 126 is from:

(1) Route 101 near Ventura to Route 5.

(2) Route 5 to Route 14 near Solemint.

(b) Route 126 from Route 101 near Ventura to Route 5 shall be known and designated as the ''Santa Paula Freeway.''

(c) (1) The commission, upon a determination that it is in the best interest of the state to do so, may relinquish to the City of Santa Clarita the portion of Route 126 that is between Route 5 and Route 14, pursuant to the terms of a cooperative agreement between the City of Santa Clarita 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.

(3) The portion of Route 126 relinquished under this subdivision shall cease to be a state highway on the effective date of the relinquishment.

(4) For portions of Route 126 that are relinquished under this subdivision, the City of Santa Clarita shall maintain within its jurisdiction signs directing motorists to the continuation of Route 126.

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## CHAPTER 758

An act to add Section 154.1 to the Streets and Highways Code, relating to highways.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 154.1 is added to the Streets and Highways Code, to read:

154.1. (a) Notwithstanding Section 154 or any other provision of law and subject to subdivision (b), if the department determines that the County of Los Angeles is in compliance with the standards developed and established pursuant to Section 261 as to the Malibu Canyon-Las Virgenes Highway (N1), from Route 1 to Lost Hills Road in Los Angeles County, the department shall designate that portion of that county highway a county scenic highway.

(b) A designation pursuant to subdivision (a) may only be made by the department if the County of Los Angeles applies for the designation, and includes in its application a formally adopted resolution acknowledging its desire to designate that portion of the county highway a county scenic highway.

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## CHAPTER 759

An act to add Section 147 to the Streets and Highways Code, relating to transportation.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 147 is added to the Streets and Highways Code, to read:

147. The director shall, without supplanting any other program required to be administered by the department or redirecting funds allocated to other programs, restart program efforts in District 7 of the department to develop and implement additional shared use agreements for public use of private parking lots as park and ride facilities. These shared use agreements shall be developed and implemented to complement and facilitate ridership on existing and planned transit routes in District 7, including, but not limited to, the Los Angeles County Metropolitan Transportation Authority's Metro Rapid Bus route along Ventura Boulevard and the proposed East-West Busway in the San Fernando Valley, for the purpose of reducing congestion on state highways. The department shall not enter into any shared use agreement that would result in costs to the department over the life of the agreement.

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## CHAPTER 760

An act to amend Sections 14307 and 14315 of, and to add Section 14309 to, the Public Resources Code, relating to the California Conservation Corps.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 14307 of the Public Resources Code is amended to read:

14307. Fire prevention, fire suppression, and disaster relief including, but not limited to, flood, earthquake, pest infestation assistance measures, and search and rescue efforts shall be a major emphasis of the program. Certain corps centers designated by the director as fire centers in locations specifically needed to assure emergency capability and readiness for firefighting and natural disaster relief shall be administered and directed jointly by the director of the corps and the Director of Forestry and Fire Protection. The director of the corps shall be responsible for setting the policies under which these centers shall be operated and shall be responsible for the recruitment, orientation, job training, project planning, and educational and other services generally provided in the corps at its base centers. The Director of Forestry and Fire Protection, and his or her designee, shall be responsible for the supervision of corps members engaged in public service conservation work and for the training, supervision, and

direction of corps members engaged in fire prevention, fire suppression, and other emergency activities.

SEC. 2. Section 14309 is added to the Public Resources Code, to read:

14309. In order to provide the best and most cost-effective training possible for corps members and other state employees, state agencies shall seek to combine or share training programs that provide related skills.

SEC. 3. Section 14315 of the Public Resources Code is amended to read:

14315. (a) Subject to the availability of assistance from the corps, a state agency that is considering the use of contracted labor shall give priority to the corps when the mission of the corps and the nature of the state agency's project are substantially consistent.

(b) State agencies shall notify the corps of potential contracts for services that fit within the parameters of the legislative intent set forth in Section 14000 and shall use the corps to the maximum extent feasible to carry out projects that promote the legislative intent as set forth in Section 14000. Because of the corps' commitment to the state's youth, in the exercise of a state agency's discretion when considering contracts for services, strong consideration shall be given to the use of corps members over the use of other contracted labor.

(c) The corps may contract with any state agency for the performance of activities consistent with this division.

(d) Upon appropriation by the Legislature and execution of a contract pursuant to subdivision (b), the Controller may transfer money to the Collins-Dugan California Conservation Corps Fund from other funds under the control of the contracting state agency, including, but not limited to, the following funds and accounts:

(1) Hazardous Waste Control Account in the General Fund.

(2) State Highway Account in the State Transportation Fund.

(3) Transportation Planning and Development Account in the State Transportation Fund.

(4) California Environmental License Plate Fund.

(5) Fish and Game Preservation Fund.

(6) Public Resources Account in the Cigarette and Tobacco Products Surtax Fund.

(7) Unallocated Account in the Cigarette and Tobacco Products Surtax Fund.

(8) Habitat Conservation Fund.

(9) Motor Vehicle Fuel Account in the Transportation Tax Fund pursuant to Section 8352.6 of the Revenue and Taxation Code (OMV Fund).

(10) Oil Spill Prevention and Administration Fund.

(11) Integrated Waste Management Account in the Integrated Waste Management Fund.

(12) State Parks and Recreation Fund.

(13) Solid Waste Disposal Site Cleanup and Maintenance Account in the General Fund.

(14) Employment Training Fund.

(15) Harbors and Watercraft Revolving Fund.

(16) California Beverage Container Recycling Fund.

(e) Expenditures from the Collins-Dugan California Conservation Corps Fund of amounts transferred pursuant to subdivision (d) shall be limited to purposes which are consistent with the requirements of each fund or account contributing each amount to the Collins-Dugan California Conservation Corps Fund.

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## CHAPTER 761

An act relating to state property.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. (a) The Department of Transportation shall transfer to the Department of Parks and Recreation, upon payment by the City of Newport Beach of consideration of one million three hundred fifty-six thousand four hundred eighty-five dollars ($1,356,485), which is at least equal to the acquisition cost paid by the state, pursuant to Section 9 of Article XIX of the California Constitution, the state-owned real property described in subdivision (b), for state park purposes. The funds paid pursuant to this section shall be deposited in the State Highway Account.

(b) The property to be transferred pursuant to subdivision (a) consists of approximately 15.05 acres, located in the coastal zone of the City of Newport Beach, adjacent to Superior Avenue and Pacific Coast Highway, identified by Director's Deed #040766-01-01 and known as ''Caltrans West.''

SEC. 2. Execution of the property transfer specified in Section 1 of this act shall be contingent upon the execution of an agreement between the Department of Parks and Recreation and the City of Newport Beach that requires the city to accept and perform all of the responsibilities relating to, and to assume the liability for, the construction, operation, and maintenance of the park and its improvements.

SEC. 3. Due to the unique circumstances concerning the Department of Transportation property in the City of Newport Beach, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution, and that this special statute is necessary.

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.

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## CHAPTER 762

An act to amend Sections 65040.2 and 65040.12 of the Government Code, relating to environmental justice.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 65040.2 of the Government Code is amended to read:

65040.2. (a) In connection with its responsibilities under subdivision (*l*) of Section 65040, the office shall develop and adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3. For purposes of this section, the guidelines prepared pursuant to Section 50459 of the Health and Safety Code shall be the guidelines for the housing element required by Section 65302. In the event that additional elements are hereafter required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3, the office shall adopt guidelines for those elements within six months of the effective date of the legislation requiring those additional elements.

(b) The office may request from each state department and agency, as it deems appropriate, and the department or agency shall provide, technical assistance in readopting, amending, or repealing the guidelines.

(c) The guidelines shall be advisory to each city and county in order to provide assistance in preparing and maintaining their respective general plans.

(d) The guidelines shall contain the guidelines for addressing environmental justice matters developed pursuant to Section 65040.12.

(e) The office shall provide for regular review and revision of the guidelines established pursuant to this section.

SEC. 2. Section 65040.12 of the Government Code is amended to read:

65040.12. (a) The office shall be the coordinating agency in state government for environmental justice programs.

(b) The director shall do all of the following:

(1) Consult with the Secretaries of the California Environmental Protection Agency, the Resources Agency, the Trade and Commerce Agency, and the Business, Transportation and Housing Agency, the Working Group on Environmental Justice established pursuant to Section 72002 of the Public Resources Code, any other appropriate state agencies, and all other interested members of the public and private sectors in this state.

(2) Coordinate the office's efforts and share information regarding environmental justice programs with the Council on Environmental Quality, the United States Environmental Protection Agency, the General Accounting Office, the Office of Management and Budget, and other federal agencies.

(3) Review and evaluate any information from federal agencies that is obtained as a result of their respective regulatory activities under federal Executive Order 12898, and from the Working Group on Environmental Justice established pursuant to Section 72002 of the Public Resources Code.

(c) When it adopts its next edition of the general plan guidelines pursuant to Section 65040.2, but in no case later than July 1, 2003, the office shall include guidelines for addressing environmental justice matters in city and county general plans. The office shall hold at least one public hearing prior to the release of any draft guidelines, and at least one public hearing after the release of the draft guidelines. The hearings may be held at the regular meetings of the Planning Advisory and Assistance Council.

(d) The guidelines developed by the office pursuant to subdivision (c) shall recommend provisions for general plans to do all of the following:

(1) Propose methods for planning for the equitable distribution of new public facilities and services that increase and enhance community quality of life throughout the community, given the fiscal and legal constraints that restrict the siting of these facilities.

(2) Propose methods for providing for the location, if any, of industrial facilities and uses that, even with the best available technology, will contain or produce material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant hazard to human health and safety, in a manner that seeks to avoid over-concentrating these uses in proximity to schools or residential dwellings.

(3) Propose methods for providing for the location of new schools and residential dwellings in a manner that seeks to avoid locating these uses in proximity to industrial facilities and uses that will contain or produce material that because of its quantity, concentration, or physical or chemical characteristics, poses a significant hazard to human health and safety.

(4) Propose methods for promoting more livable communities by expanding opportunities for transit-oriented development so that residents minimize traffic and pollution impacts from traveling for purposes of work, shopping, schools, and recreation.

(e) For the purposes of this section, ''environmental justice'' means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

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## CHAPTER 763

An act to amend Section 44260 of, and to add and repeal Section 43023.5 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. (a) The Legislature finds and declares both of the following:

(1) Air pollution is a serious and persistent problem for the health and welfare of the citizens of the state, and it poses a threat to our natural environment.

(2) Certain areas of the state suffer from greater exposure to poor air quality, particularly pollutants emitted by motor vehicles.

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

(1) Focus existing state air quality programs more directly on those geographic areas that suffer from the greatest exposure to poor air quality.

(2) Structure future state air quality programs in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state.

(3) Include, in any future appropriations intended to provide incentives for the purchase of zero emission vehicles by a member of the public or by a public agency, a concurrent appropriation for air quality emission reduction programs that are designed to benefit communities with significant air quality problems.

SEC. 2. Section 43023.5 is added to the Health and Safety Code, to read:

43023.5. (a) Notwithstanding the requirements established by Provision 3 of Item 3900-001-0044 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001) requiring all districts to distribute one-half of the funds subject to that provision in a manner that directly benefits low-income communities and communities of color that are disproportionately impacted by air pollution, only districts with a population of one million residents or greater, in consultation with the state board, shall ensure that not less than 50 percent of the funds subject to that provision and any other funds appropriated for purposes of the programs specified in paragraphs (1) to (3), inclusive, are expended in a manner that directly reduces air contaminants or reduces the public health risks associated with air contaminants in those districts, including, but not limited to, airborne toxics and particulate matter, in communities with the most significant exposure to air contaminants or localized air contaminants, or both, including, but not limited to, communities of minority populations or low-income populations, or both:

(1) The Carl Moyer Air Quality Standards Attainment Program (Chapter 9 (commencing with Section 44275) of Part 5 of Division 26 of the Health and Safety Code).

(2) Programs for the purchase of reduced-emissions schoolbuses.

(3) Diesel mitigation programs.

(b) Notwithstanding the requirements established by Provision 3 of Item 3900-001-0044 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001) requiring all districts to distribute one-half of the funds subject to that provision in a manner that directly benefits low-income communities and communities of color that are disproportionately impacted by air pollution, a district with less than one million residents is encouraged to expend funds available to the district for the purposes specified in subdivision (a) in a manner similar to that set forth in subdivision (a), to the extent that district determines that this is feasible.

(c) This section shall remain in effect 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. Section 44260 of the Health and Safety Code is amended to read:

44260. The state board, in conjunction with the State Energy Resources Conservation and Development Commission, shall develop and administer a program to provide grants to individuals, local governments, public agencies, nonprofit organizations, and private businesses, to encourage the purchase or lease of a new zero-emission vehicle. The state board may reserve, allocate, and reallocate funds to any of those potential grant recipients. The state board shall periodically review grant applications and the award of grants to ensure, to the greatest extent possible, that all grant funds are used. The state board may reduce or eliminate grants awarded pursuant to this chapter if the state board determines that the recipient received a grant for the purchase or lease of a zero-emission vehicle in the Budget Act of 2001.

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.

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## CHAPTER 764

An act to add Sections 57008, 57009, and 57010 to, and to add Chapter 6.10 (commencing with Section 25401) to Division 20 of, the Health and Safety Code, relating to hazardous materials, and making an appropriation therefor.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Chapter 6.10 (commencing with Section 25401) is added to Division 20 of the Health and Safety Code, to read:

### CHAPTER 6.10. CALIFORNIA LAND ENVIRONMENTAL RESTORATION AND REUSE ACT

25401. This chapter shall be known, and may be cited as, the California Land Environmental Restoration and Reuse Act.

25401.1. For purposes of this chapter, the following terms have the following meanings:

(a) ''Department'' means the Department of Toxic Substances Control.

(b) ''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.

(2) A hazardous waste, as defined in Section 25117.

(3) A waste, as defined in Section 13050 of the Water Code or as defined in paragraph (2) of subdivision (b) of Section 101075.

(c) ''Local agency'' means the local department, office, or other agency of a city or county designated pursuant to subdivision (a) of Section 25401.2.

(d) ''Oversight agency'' means the department or the regional board, as appropriate, that oversees a site investigation and remedial action pursuant to this chapter.

(e) ''Person'' means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, or corporation, including, but not limited to, a government corporation. ''Person'' also includes any city, county, city and county, district, commission, or the state, or any department, agency, or political subdivision thereof, any interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

(f) ''Phase I environmental assessment'' means a preliminary assessment of a property to determine whether there has been, or may have been, a release of hazardous material on or near the property, based on reasonably available information about the property and the area in its vicinity. A phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, historical aerial photographs of the property and the area in its vicinity, relevant files of federal, state, and local agencies, regulatory correspondence, records of prior releases of hazardous materials and environmental reports, data base searches, visual and other surveys of the property, and interviews with available current and previous owners and operators of the property. A phase I environmental assessment does not require sampling or testing on or around a property.

(g) ''Preliminary endangerment assessment'' means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials that pose a threat to public health or the environment. A preliminary endangerment

assessment shall be conducted in a manner that complies with the guidelines published by the department entitled ''Preliminary Endangerment Assessment: Guidance Manual,'' and that evaluates whether any hazardous material has been discharged, threatens to discharge, or is discharging, to waters of the state. A preliminary endangerment assessment requires sampling and analysis of a property, a preliminary determination of the type and extent of hazardous materials release or threatened release on contamination of the property, and a preliminary evaluation of the risks that hazardous materials contamination of the property may pose to public health or the environment, including waters of the state.

(h) (1) ''Property'' means real property, as defined in Section 658 of the Civil Code.

(2) ''Property'' does not include any of the following:

(A) A site listed on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) or proposed for, and ranked as, qualifying for this list.

(B) A site on the list maintained by the department pursuant to Section 25356.

(C) An active or former federal military base or property that is or was owned by any department, agency, or instrumentality of the United States.

(D) A property for which a no-further-action determination has been issued by the department or a regional board, under applicable statutes or regulations.

(E) A site that is, or becomes, subject to an enforcement action or order issued by a regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code, or an enforcement action by the department pursuant to Chapter 6.5 (commencing with Section 25100) or Chapter 6.8 (commencing with Section 25300).

(F) A site that is, or becomes, subject to a corrective action requirement, or for which a no-further-action determination has been issued, by a regional board or a local oversight program pursuant to Section 25297.1 or Chapter 6.75 (commencing with Section 25299.10), unless the local agency makes one of the findings described in subdivision (b) of Section 25401.3 for a hazardous material other than petroleum.

(G) A site that is, or becomes, subject to a corrective action order issued pursuant to Section 25187, or a site that is, or becomes, authorized or permitted pursuant to Chapter 6.5 (commencing with Section 25100) for the treatment, storage, or disposal of hazardous waste.

(H) A site that is, or becomes, subject to a response or cleanup operation under Chapter 7.4 (commencing with Section 8670.1) of Division 1 of Title 2 of the Government Code.

(I) A site that is, or becomes, subject to an order for corrective action issued pursuant to a corrective action under Part 5 (commencing with Section 45000) of Division 30 of the Public Resources Code.

(J) A site located within a redevelopment area established pursuant to Division 24 (commencing with Section 33000).

(K) A site that is larger than five acres of contiguous property under the same ownership.

(L) A site that has one or more full-time equivalent employees on an annualized basis, excluding employees who are primarily responsible for maintaining site security.

(M) A site that is owned by any state or local public agency.

(N) A site that is being used for productive agriculture.

(O) A site for which the owner or operator, within 60 days following receipt of a notice from a local agency issued pursuant to Section 25401.3 or 25401.4, enters into a voluntary agreement with an oversight agency to commence and complete a site investigation and remediation of the property under that oversight agency's oversight and jurisdiction.

(P) A site for which the owner or operator, within 60 days following receipt of a notice from a local agency issued pursuant to Section 25401.3 or 25401.4, requests the designation of an administering agency to oversee a site investigation and remedial action at the site pursuant to Chapter 6.65 (commencing with Section 25260).

(Q) Property that is the subject of continuous expansion or improvement, and is owned or operated by an operating industrial or commercial activity.

(R) Residential property with an owner-occupied dwelling.

(S) Property occupied by a family-owned business that has no employees other than members of the family or a business that has no employees other than the owners.

(T) Property that is dedicated to a public use by a public utility, as provided in Section 1007 of the Civil Code.

(U) Property acquired, to be acquired or proposed for use as a schoolsite, prior to its occupancy for a school, if a school district has entered into an enforceable environmental oversight agreement with the department to conduct a preliminary endangerment assessment or other response action at the property pursuant to Section 17213.1 of the Education Code. The exclusion provided in this subparagraph shall not apply if the school district determines, after entering into that agreement, not to pursue the use of the site as a school, or if the agreement between the department and the school district is terminated or expires.

(i) (1) ''Qualified person'' means one of the following:

(A) For activities conducted under Section 25401.6, an environmental assessor, as defined in paragraph (2).

(B) For activities conducted under Section 25401.7, an environmental assessor, as defined in paragraph (2), who also has demonstrated expertise in hazardous materials site investigation and cleanup.

(2) ''Environmental assessor'' means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570), a professional engineer registered in this state, a geologist registered in this state, a certified engineering geologist registered in this state, or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science, engineering geology, or environmental or public health, or a directly related science field. In addition, any person who conducts a phase I environmental assessment shall have at least two years experience in the preparation of those assessments and any person who conducts a preliminary endangerment assessment shall have at least three years experience in conducting those assessments.

(j) ''Reasonably foreseeable uses'' means land uses that are authorized under the applicable general plan and zoning code, and any additional uses that are identified by the local land use agency as reasonably foreseeable uses for a property at the time the preliminary endangerment assessment for that property is being prepared pursuant to Section 25401.4 or 25401.6.

(k) ''Remedial action'' means a remedial action, as defined in subdivision (g) of Section 25260.

(*l*) ''Remediation plan'' means a proposal to complete a site investigation and a remedial action on a property, a schedule for the conduct of that site investigation and remedial action, the method for the oversight of those actions, and the state and local laws, ordinances, regulations, and standards that are applicable to those actions, for approval by the oversight agency pursuant to Section 25401.5 or 25401.7.

(m) ''Regional board'' means a California regional water quality control board.

(n) ''Release'' has the same meaning as defined in Section 25320, but with respect to a hazardous material.

(o) ''Responsible party'' means a ''responsible party'' or ''liable person'' as defined in subdivision (a) of Section 25323.5, or a person subject to an order pursuant to subdivision (a) of Section 13304 of the Water Code.

(p) ''Site investigation'' has the same meaning as defined in Section 25260.

(q) ''Written determination of completion'' means a document issued by the oversight agency that certifies that a remedial action carried out pursuant to this chapter has been satisfactorily completed, in accordance with an approved remediation plan, that applicable remedial action standards and objectives have been achieved, that financial assurance for all operation and maintenance activities, if applicable, has been obtained, and that the property for which the written determination of completion is issued does not pose a significant risk to human health or the environment, does not impact the beneficial uses of waters of the state, and is in a condition that allows it permanently to be used for its reasonably foreseeable uses without any significant risk to human health or any significant potential for future environmental damage. The written determination of completion shall also specifically describe any conditions, restrictions, or limitations imposed on the site, including financial assurance, if applicable, and any land use controls placed on the property. The written determination of completion shall specifically identify the locations where the remediation plan that formed the basis of the determination is kept on file by the oversight agency and the local agency. These files shall be made available to the public upon request.

25401.2. (a) A city or county may elect to implement this chapter. If a city or county elects to implement this chapter, the governing body of the city or county shall adopt an implementing ordinance, which shall be consistent with this chapter and, in addition to including any other matter in the ordinance that the governing body of the city or county deems necessary, shall do all of the following:

(1) Designate a department, office, or other agency of the city or county as the local agency responsible for implementing and enforcing this chapter.

(2) Delineate the geographical areas of the city or county to which this chapter shall apply.

(3) Specify the administrative or civil penalties that apply to a person who does not submit to the local agency a phase I environmental assessment, preliminary endangerment assessment, or site investigation and remediation plan on or before the date that the document is required to be submitted pursuant to this chapter.

(4) Require the local agency to obtain the approval of the governing body of that local agency before it initiates a remedial action pursuant to Section 25401.7.

(5) Authorize the local agency to enter into an agreement with an oversight agency for a property, selected in accordance with this chapter, regarding the oversight agency's activities to review documents, assure implementation, perform other related site investigation and remediation activities, and provide for cost reimbursement.

(b) On or before April 1, 2002, the California Environmental Protection Agency shall establish guidelines for selecting the oversight agency to supervise the site investigation and remedial action of a property subject to this chapter. The guidelines shall do all of the following:

(1) Specify an address at the California Environmental Protection Agency to which the local agency shall send any phase I environmental assessments prepared pursuant to this chapter.

(2) Require that the oversight agency selected pursuant to this chapter to be either the department, the appropriate regional board, or a local agency, pursuant to paragraph (5).

(3) Specify the factors that shall be taken into account, and the criteria that shall be used to, select the oversight agency. The factors and criteria shall conform as closely as is feasible to the factors and criteria set forth in paragraph (1) of, and subparagraphs (A) and (B) of paragraph (2) of, subdivision (c) of Section 25262.

(4) Establish guidelines for transferring oversight responsibility for a property from the selected oversight agency to the agency that was not selected, as information on a property becomes available. The guidelines shall not authorize any transfer that unreasonably delays site investigations of properties and shall not authorize the transfer of a property subject to Section 25401.5 or 25401.7, if the transfer itself will delay the implementation of the schedule established in the remediation plan for the property, unless the local agency agrees to the transfer.

(5) Establish the conditions under which the oversight of a site investigation and remedial action at a property subject to this chapter may be delegated to a local agency and the conditions under which the delegation shall be withdrawn. The guidelines may authorize this delegation only if the local agency to provide the oversight is qualified, as specified in subparagraph (C) of paragraph (3) of subdivision (a) of Section 25404.1, or the local agency enters into an agreement with the State Water Resources Control Board to implement a local oversight program pursuant to subdivision (b) of Section 25297.1, and the local agency has jurisdiction over the property pursuant to that qualification or agreement. A local agency qualified to be delegated oversight authority pursuant to this paragraph shall only serve as an oversight agency under this chapter for remediation activities solely involving underground storage tanks or a remediation project that is exempt from Division 13 (commencing with Section 21000) of the Public Resources

Code, pursuant to Section 21084 of the Public Resources Code. The guidelines shall also include a process for oversight and periodic compliance monitoring of a local agency that is qualified to be delegated oversight authority by an oversight agency.

(c) The establishment of guidelines pursuant to subdivision (b) is not the adoption of regulations for purposes of, and is not subject to, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The California Environmental Protection Agency shall make the guidelines available to any interested person upon request and shall post the guidelines on the agency's Internet Web site maintained by the California Environmental Protection Agency.

(d) On or before the 10th day of each month, representatives from the department and the State Water Resources Control Board shall review all phase I environmental assessments received by the California Environmental Protection Agency and, using the factors and criteria established pursuant to paragraph (3) of subdivision (b), shall jointly select the oversight agency for each property for which a phase I environmental assessment is received. Upon the selection of the oversight agency, the agency shall immediately transmit the phase I environmental assessment for that property to the selected oversight agency, which shall review and make the determination required by subdivision (d) of Section 25401.4 within 30 calendar days of the later of either of the following dates:

(1) When the agency receives the phase I environmental assessment.

(2) When the local agency enters into a written agreement with the oversight agency regarding reimbursement of the oversight agency's costs pursuant to paragraph (4) of subdivision (k) of Section 25401.4.

(e) The oversight agency shall ensure this chapter is implemented in compliance with all state and local laws, ordinances, regulations, and standards that are applicable to the site investigation and remedial activities at the property.

25401.3. (a) A local agency that makes one of the findings specified in subdivision (b) may issue a notice to the owner or operator of a property requiring the owner or operator to provide the local agency with information in the possession or control of the owner or operator that, in the judgment of the local agency, may be relevant to determining if a hazardous materials release may be present on the property. This information may include, but is not limited to, any environmental assessment that has been prepared for the property, or any type of information that may be relevant to the preparation of a phase I environmental assessment, a preliminary endangerment assessment, or any other evaluation of environmental condition of the property.

(b) A local agency may issue a notice pursuant to subdivision (a), if the local agency makes one or more of the following findings:

(1) Hazardous materials are, or were, used, handled, stored, treated, transported, or disposed on the property.

(2) Current or former owners or operators of the property are, or were, engaged in activities that are, or were, commonly associated with the use, handling, storage, treatment, transport or disposal of hazardous materials.

(3) Information obtained from current or former owners or operators of the property, from their employees, or from persons in the surrounding community, provides a reasonable basis for believing that hazardous materials are, or were, used, handled, stored, treated, transported, or disposed on the property or that a hazardous materials release may have occurred on the property.

(4) Visual or other physical evidence provides a reasonable basis for believing that a hazardous materials release may have occurred on the property.

(5) There is other reasonable evidence that a hazardous materials release has occurred on the property.

(c) An owner or operator of a property that receives a notice pursuant to subdivision (a) shall provide the local agency with all information required by the notice that is in the possession or control of the owner or operator within 30 calendar days of the date of receipt of the notice.

25401.4. (a) If a local agency determines, based on the information provided pursuant to Section 25401.3, that a property is, or may be affected by, a hazardous materials release, or threat of a release, the local agency shall make a finding that the property is, or may be affected by, the release. In response to the known or suspected release and in order to assure the protection of human health and the environment for the future uses of, and benefit to, the property, the local agency may then issue a notice requiring the owner or operator of a property to conduct a phase I environmental assessment of the property to determine if a hazardous materials release, or threat of a release, may be present and, if so, whether a preliminary endangerment assessment should be prepared for the site.

(b) An owner or operator that is required to conduct a phase I environmental assessment of a property pursuant to this section shall, within 60 calendar days of the date of receipt of a notice from the local agency requiring a phase I environmental assessment, prepare and deliver this assessment to the local agency. The local agency shall submit the phase I environmental assessment to the California Environmental Protection Agency which shall ensure an oversight agency is selected in a timely manner and shall ensure that the oversight agency reviews the phase I environmental assessment as required by subdivision (d).

(c) A phase I environmental assessment prepared pursuant to this section shall contain one of the following recommendations regarding the need for further environmental investigation of the property:

(1) Further environmental investigation of the property is not required.

(2) A preliminary endangerment assessment should be prepared to determine if one or more hazardous materials releases have occurred on the property and, if so, the type and extent of the releases.

(d) The oversight agency shall review a phase I environmental assessment submitted pursuant to subdivision (b), and shall determine if the phase I environmental assessment is adequate and the recommendation made in the phase I environmental assessment regarding the need for further environmental investigation and remedial action of the property is appropriate and supported by the information provided in the phase I environmental assessment. The oversight agency shall notify the local agency of its determination within 45 calendar days of the date it receives the phase I environmental assessment. If the oversight agency determines that a recommendation under paragraph (1) of subdivision (c) is made because there is no release or threat of a release of a hazardous material, the oversight agency shall issue a determination that no further action is required under this chapter.

(e) If the phase I environmental assessment that is prepared by the owner or operator of a property pursuant to this section recommends that further environmental investigation of the property is not required pursuant to subdivision (c), and if the property owner or operator has not submitted an application to the county or city to develop the property, the local agency shall reimburse the owner or operator for the reasonable costs of preparing the phase I environmental assessment within 90 calendar days of receipt of the phase I environmental assessment by the local agency.

(f) (1) If the owner or operator of a property has been reimbursed for the reasonable costs of preparing a phase I environmental assessment pursuant to subdivision (e) and subsequently submits an application to the county or city to develop the property that relies on that phase I environmental assessment, the owner or operator, or subsequent owner or operator, to the extent that the property has been sold, shall return that reimbursement to the local agency within 90 calendar days from the date of the sale or the effective date of discretionary local approval of the new development, whichever comes first.

(2) For purposes of this subdivision, a discretionary local agency approval means a local agency approval of a project, as defined in Section 21065 of the Public Resources Code.

(g) If the oversight agency determines that the phase I environmental assessment is not adequate or that a recommendation in the assessment

is not appropriate, the local agency may require the owner or operator of the property to provide additional information or to prepare a preliminary endangerment assessment for the property.

(h) (1) If the oversight agency does not provide the local agency with the determination required by subdivision (d) within the required period of time, the local agency may find that the phase I environmental assessment is not adequate or that the recommendations made by the assessment are not appropriate. If the local agency makes such a finding, the local agency shall state the reasons for that finding and may require the owner or operator of the property to provide additional information in support of the recommendation.

(2) Paragraph (1) does not authorize a local agency to make a determination that the phase I environmental assessment shows that there is no further action required at the site, or to determine what, if any, further site investigation and remediation may be required, other than to require the owner or operator to provide information or prepare a preliminary endangerment assessment.

(i) The local agency may send the owner or operator of the property a notice requiring that the owner or operator prepare a preliminary endangerment assessment for review by the oversight agency and that the owner or operator deliver the preliminary endangerment assessment to the oversight agency, with a copy to the local agency within 120 calendar days of the date the owner or operator receives the notice, if the local agency determines that either of the following apply:

(1) The phase I environmental assessment recommends that a preliminary endangerment assessment be prepared for the property.

(2) The oversight agency reviewing the phase I environmental assessment determines that a preliminary endangerment assessment should be prepared.

(j) A preliminary endangerment assessment prepared pursuant to this section shall make one of the following findings:

(1) A hazardous materials release or threat of a release is not present on the property and no further action is required.

(2) Although a hazardous materials release is present on the property, the property is in a condition that allows it to be used permanently for its reasonably foreseeable uses without any significant risk to human health or any significant risk to public health, safety, and the environment, including potential for future environmental damage, and is protective of the waters of the state, in accordance with criteria set forth in Section 25356.1.5, in compliance with applicable law, and no further action is otherwise required.

(3) A hazardous materials release is present on the property and a site investigation and remedial action should be carried out by the owner or operator of the property to restore the property to a condition that allows

it to be used for its reasonably foreseeable uses without any significant risk to public health, safety, and the environment, including any potential for future environmental damage, and is protective of the waters of the state, in accordance with the criteria set forth in Section 25356.1.5, in compliance with applicable law.

(k) If the oversight agency determines that the preliminary endangerment assessment is not adequate, or that the recommendations made by the assessment are not appropriate, the oversight agency shall state the reasons for that finding and may require the owner or operator of the property to provide additional information in support of the recommendation. If the oversight agency determines that the preliminary endangerment assessment is adequate and that the finding made by the preliminary endangerment assessment is appropriate, all of the following shall apply to the property:

(1) If the assessment makes the finding described in paragraph (1) of subdivision (j), the oversight agency shall issue the owner or operator a written determination that no further action is required, the owner or operator of the property shall be deemed to be in compliance with this chapter, and the local agency shall not require the owner or operator to take any further action pursuant to this chapter.

(2) If the assessment makes the finding described in paragraph (2) of subdivision (j), the oversight agency shall issue one of the following written determinations:

(A) After an owner or operator of the property remediates the property so that no restrictions apply to that property's future uses and the waters of the state are protected in compliance with applicable law, the oversight agency may issue a written determination that no further action is required.

(B) No further action is required on condition that specified future uses of the property are prohibited and the waters of the state are protected in compliance with applicable law. If the oversight agency proposes to make a determination that no further action is required and that determination is conditioned on a prohibition of future uses, the oversight agency shall notify the interested public of the proposed determination by publishing a notice in a newspaper of general circulation in the community and providing a public comment period of at least 30 days. Before making a final determination pursuant to this subparagraph, the oversight agency shall consider the public comments received by the oversight agency. The oversight agency may not issue a conditional determination that no further action is required pursuant to this subparagraph until the owner or operator records an easement, covenant, restriction, or servitude, or combination thereof, describing the future uses of the property that are permitted and those that are prohibited, in the same manner that a land use control is recorded

pursuant to subdivision (a) of Section 25398.7. A conditional determination that no further action is required shall be valid only during the time that the uses of the property fully conform to that recorded land use control, easement, covenant, restriction, or servitude, or any combination thereof.

If the oversight agency makes a determination under this subparagraph that requires operation and maintenance activities, as defined in Section 25318.5, the owner shall demonstrate and maintain financial assurance in accordance with Section 25355.2 throughout the period of time necessary to complete all required operation and maintenance activities. The oversight agency shall not issue a determination under this subparagraph until the required financial assurance, if applicable, is obtained.

(3) If the finding is the finding described in paragraph (3) of subdivision (j), the local agency may take action pursuant to Section 25401.5.

(4) Prior to, or concurrent with, the oversight agency's review of the phase I environmental assessment, the local agency shall enter into an agreement with the oversight agency regarding the oversight agency's activities to review the phase I environmental assessment or preliminary endangerment assessment, assure implementation, perform other related site investigation activities, and provide for cost reimbursement pursuant to this chapter. The funds received for cost reimbursement provided by a local agency pursuant to the agreement are continuously appropriated to the oversight agency for expenditure for the purposes specified in the agreement.

25401.5. (a) If the preliminary endangerment assessment prepared for the property pursuant to Section 25401.4 makes the finding described in paragraph (3) of subdivision (j) of Section 25401.4, the local agency or oversight agency may find, and issue a notice to the owner or operator of a property, that a site investigation and remedial action may be necessary.

(b) (1) The owner or operator of a site that receives a notice pursuant to subdivision (a) shall, within 90 calendar days of the date of receipt of the notice, provide the local agency and oversight agency with a remediation plan, which shall include a proposal, in compliance with the applicable law, regulations, and standards, for conducting a site investigation and remedial action, a schedule for completing the site investigation and remedial action, and a proposal for any other remedial action that the owner or operator proposes to take in response to the release or threatened release of hazardous materials at the property. The oversight agency may approve the remediation plan under any of the following procedures:

(A) A voluntary agreement with the oversight agency under Chapter 6.8 (commencing with Section 25300) or under Division 7 (commencing with Section 13000) of the Water Code.

(B) An enforceable agreement with the department to carry out the site investigation and remedial action pursuant to Chapter 6.8 (commencing with Section 25300).

(C) The procedure set forth in Chapter 6.85 (commencing with Section 25396).

(D) The procedure set forth in Chapter 6.65 (commencing with Section 25260).

(E) The procedure set forth in Chapter 5 (commencing with Section 13300) of Division 7 of the Water Code.

(2) The remediation plan proposed by an owner or operator shall be reviewed and, if satisfactory, approved by the oversight agency in compliance with all applicable state and local laws, regulations, ordinances, and standards. Any schedule extending beyond two years for the completion of a site investigation and remediation in the remediation plan shall not be approved unless the local agency and the oversight agency approve the schedule. The schedule or the remediation plan may not be modified by the owner or operator unless the oversight agency, following consultation with the local agency, approves the modification. An oversight agency shall comply with all applicable state and local laws, regulations, ordinances, and standards in reviewing, approving, and assuring implementation of a remediation plan.

(c) The owner or operator shall meet the schedule for carrying out the site investigation and remedial action approved pursuant to paragraph (2) of subdivision (b). If the owner or operator notifies the local agency pursuant to subdivision (d) that the owner or operator does not intend to carry out the required site investigation and remedial action pursuant to the remediation plan, or if the owner or operator does not comply with the schedule in the remediation plan, the local agency may take a remedial action pursuant to Section 25401.7.

(d) An owner or operator of property that satisfactorily completes a site investigation and remedial action at the site pursuant to an approved remediation plan, and that receives written notice from the oversight agency that no further action with respect to the property is required, shall be deemed in compliance with the requirements of this chapter and the local agency may not require the owner or operator to conduct any further action at the property for the hazardous materials release that is the subject of the remediation plan pursuant to this chapter.

25401.6. (a) If a local agency determines that the owner or operator of a property did not submit a phase I environmental assessment or prepare a preliminary endangerment assessment in accordance with the schedule required by this chapter and the notice issued pursuant to

Section 25401.4, the local agency shall provide a notice of noncompliance to the owner or operator.

(b) If the owner or operator does not, as determined by the local agency, comply with the notice of noncompliance within 14 calendar days of the date of receipt of notice, and the local agency determines that a phase I environmental assessment or preliminary endangerment assessment is needed to protect human health and the environment based on the reasonably foreseeable uses of the property, or to protect waters of the state, the local agency may prepare a phase I environmental assessment or the preliminary endangerment assessment required by Section 25401.4, and bill the owner or operator of the property for all reasonable costs involved in preparing the phase I environmental assessment or preliminary endangerment assessment.

(c) If a phase I environmental assessment that is prepared by a local agency pursuant to this section recommends that a preliminary endangerment assessment be prepared pursuant to paragraph (2) of subdivision (c) of Section 25401.4, the owner or operator shall reimburse the local agency for the reasonable costs of preparing the phase I environmental assessment within 90 calendar days of the receipt of that phase I environmental assessment by the owner or operator.

(d) A local agency that prepares a phase I environmental assessment or a preliminary endangerment assessment for a property pursuant to Section 25401.4 may carry out the work itself or may contract with a qualified person to carry out the work. A phase I environmental assessment or a preliminary endangerment assessment prepared by a local agency or qualified person pursuant to this section shall meet the requirements of Section 25401.4 and shall be submitted to the oversight agency for review and approval. The oversight agency shall determine, in its review, whether the assessment is adequate and whether any recommendations made by the assessment regarding the need for further environmental investigation or a site investigation and remedial action at the property are appropriate and supported by the assessment.

25401.7. (a) (1) A local agency may initiate a remedial action pursuant to this chapter, if the governing body of the local agency, by resolution adopted by a majority vote of the membership of the governing body, approves the action, affirms the finding set forth in paragraph (3) of subdivision (j) of Section 25401.4, and makes one, or both, of the following findings:

(A) The owner or the operator of the property refuses to submit a remediation plan for review and approval by the oversight agency, or refuses to complete a site investigation and remedial action at the property, pursuant to the remediation plan for that property approved by the oversight agency pursuant to this chapter.

(B) The owner or operator of the property does not comply with the schedule for carrying out the site investigation and remedial action approved by the local agency and oversight agency pursuant to paragraph (2) of subdivision (b) of Section 25401.5, and the governing body determines there is no good cause for that noncompliance.

(2) A local agency may initiate a site investigation pursuant to this chapter if the owner or operator notifies the local agency that the owner or operator does not intend to carry out a required site investigation or if the owner or operator does not comply with the schedule in the remediation plan for making a site investigation, as specified in subdivision (c) of Section 25401.5.

(b) (1) Before initiating a remedial action, the local agency shall notify the property owner or operator that the governing body of the local agency has adopted the resolution required by subdivision (a), that the local agency will initiate the remedial action on the site 30 calendar days after the date the owner or operator receives the notice, that the governing body of the local agency has approved the action, and that the owner or operator is strictly liable for the reasonable costs of carrying out the remedial action and shall be billed by the local agency for those costs.

(2) Before initiating a site investigation, the local agency shall notify the property owner or operator that the local agency will initiate the site investigation on the site 30 calendar days after the date the owner or operator receives the notice, and that the owner or operator is strictly liable for the reasonable costs of carrying out the site investigation and shall be billed by the local agency for those costs.

(c) A local agency shall carry out a site investigation and remedial action under this section in compliance with all applicable state and local laws, regulations, ordinances, and standards, and pursuant to a remediation plan approved by the oversight agency. The oversight agency shall review the remediation plan, and if the oversight agency determines that the remediation plan is satisfactory, the oversight agency shall approve the remediation plan and oversee the site investigation and remedial action. The local agency shall enter into a contract with a qualified person to carry out the site investigation and approved remediation activities.

(d) (1) Upon determining that a local agency has satisfactorily completed a site investigation and remedial action under this section, in accordance with all applicable state and local laws, regulations, ordinances, and standards the oversight agency shall issue a written determination of completion to the local agency.

(2) If the remedial action requires operation and maintenance activities, as defined in Section 25318.5, financial assurance shall be demonstrated and maintained in accordance with Section 25355.2 throughout the period of time necessary to complete all required

operation and maintenance activities. The oversight agency may not issue a written determination of completion until the required financial assurance, if applicable, is obtained.

(3) If the written determination of completion issued by the oversight agency pursuant to paragraph (1) is conditioned on a remediation plan that causes the property to be suitable for some, but not all, future uses, and that prohibits specified future uses of the property unless and until further remediation or the review and approval of the oversight agency is completed, the local agency shall require the current owner of the property to record a land use control for the benefit of the property that describes those prohibited future uses of the property in the same manner as a land use control is recorded pursuant to subdivision (a) of Section 25398.7. The conditional determination of completion shall not be effective until the owner causes the recordation of the land use control. The oversight agency may not issue a conditional written determination of completion, as provided in this paragraph, until the required land use is recorded and the required financial assurance is obtained.

(4) Any conditional written determination of completion shall be valid only during the time period in which the use of the property conforms to the recorded land use control, and is in compliance with all other conditions. If the use of the property does not conform to the recorded land use control, or fails to comply with any applicable condition, the immunities provided by Section 25402.1 shall no longer apply.

(e) The local agency shall enter into an agreement with the oversight agency regarding the oversight agency's activities to review and provide oversight of a site investigation, a remedial action, and any other action taken in response to a release or a threatened release of a hazardous material, and to provide for reimbursement for administrative and oversight costs incurred by the oversight agency, in conformance with the oversight agency's authority under applicable state laws and regulations, to be reimbursed for these administrative and oversight costs. The agreement shall be executed prior to the oversight agency's review of the site investigation.

(f) Any site investigation, remedial action, engineering, and geological work performed under this section shall be conducted in conformance with any applicable state law, including, but not limited to, Sections 6735 and 7835 of the Business and Professions Code.

25401.8. (a) A local agency proposing to carry out remedial action pursuant to Section 25401.7, shall inform the community of its actions by doing all of the following:

(1) Mailing a fact sheet to the last known name and address of all organizations and individuals who have requested copies of all notices and actions by the local agency, contiguous property owners, all

agencies that are members of the site designation committee under Section 25261, property owners or occupants within 500 feet of the affected property's boundary, and all other interested parties.

(2) Publishing a notice at least one time in a newspaper of general circulation in the area of the property, in English and in any other language that is spoken by a significant number of the residents in the area of the property identified pursuant to paragraph (1).

(3) Posting of a notice at the property.

(4) Direct mailing of a notice to the agencies comprising the site designation committee, as set forth in Section 25261.

(b) For a period of no less than 45 days following the date a notice is issued pursuant to subdivision (a), the local agency and the oversight agency shall provide access to any interested person during the regular business hours of the local agency and the oversight agency for the review of all of the following documents, and shall make copies available for the actual and reasonable cost, that have been completed as of the time of the notice:

(1) The phase I environmental assessment.

(2) The preliminary endangerment assessment.

(3) Any site investigation or remedial action documents prepared pursuant to this chapter.

(c) Any interested person may provide written comments to the local agency and oversight agency regarding the adequacy of an assessment or a site investigation and remedial action for a period of no less than 30 days following the 45-day period specified in subdivision (b). The local agency shall respond, in writing, to the person providing a written comment, shall include any response provided by the oversight agency, and shall incorporate any response into the administrative record of the local agency's determinations with respect to the property. The oversight agency shall consider the public comments and the local agency's response prior to taking further action.

(d) The local agency shall hold a community meeting to gather public comments during the public comment period required by subdivision (c). The local agency shall include a summary of significant public comments made at the meeting and the response of the local agency to those comments in the administrative record of the local agency's determination with respect to the property.

(e) The community participation requirements set forth in this section are in addition to any other applicable public notice and community participation requirement that may apply to a site investigation and remedial action taken pursuant to this chapter, including, but not limited to, those requirements under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), and to any other law applicable to that oversight agency.

(f) Nothing in this chapter limits or otherwise affects the applicability of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) or the public comment and hearing requirements otherwise applicable to that oversight agency in approving a site investigation and remedial plan under applicable law.

25402. (a) (1) If a local agency requires the investigation or remediation of a property pursuant to this chapter, the owner or operator of the property shall be liable for any reasonable and necessary costs incurred by a local agency in taking any action pursuant to Section 25401.6 or 25401.7.

(2) A local agency may recover costs incurred to develop and implement a remediation plan, including the costs of reimbursing the oversight agency, approved pursuant to this chapter to the same extent the oversight agency is authorized to recover those costs.

(3) The scope and standard of liability for cost recovery by a local agency pursuant to this subdivision shall be the scope and standard of liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601 et seq.) as that act would apply to the oversight agency, except that any reference to a hazardous substance in that act shall be deemed to refer to a hazardous material, as defined in this chapter.

(4) The only defenses available to an owner and operator in any action to recover costs pursuant to this section are the defenses specified in subdivision (b) of Section 25323.5.

(b) An action for recovery of investigation and response costs incurred by a local agency shall commence within three years after completion of the remedial action at the property.

(c) The authority to recover costs provided by this section is in addition to, and is not to be construed as restricting, any other cause of action available to a local agency.

(d) This section applies only to local agencies, and does not affect the authority of the department or a regional board to recover costs under any state or federal statute.

(e) Except for the reimbursement of the oversight agency for its costs in accordance with paragraph (4) of subdivision (k) of Section 25401.4 and subdivision (e) of Section 25401.7, and notwithstanding any other provision of state law or policy, a local agency that undertakes and completes a site investigation and remedial action pursuant to a remediation plan approved by the oversight agency, that requests and receives data regarding environmental conditions on a property, or that otherwise causes an approved remediation plan to be undertaken and completed pursuant to this chapter, is not liable for any costs incurred by

a responsible party for that release to investigate or remediate the release or to compensate others for the effects of that release.

(f) A local agency is not liable for the costs of investigating or remediating a release, or for compensating others for the effects of a release or other environmental conditions on the property, solely as a result of requiring an owner or operator to prepare a phase I environmental assessment, a preliminary endangerment assessment, or a site investigation or remediation plan, or requiring an owner or operator to complete a site investigation or remediation plan that has been approved by an oversight agency pursuant to this chapter.

25402.1. (a) (1) Notwithstanding any other provision of law, and except as provided in paragraph (2), a local agency that undertakes and completes a site investigation and remedial action pursuant to this chapter, in accordance with a remediation plan that is reviewed and approved by an oversight agency and that receives a written determination of completion issued by the oversight agency, is not liable, with respect to any hazardous materials release that is identified and addressed in accordance with the remediation plan, under any of the following:

(A) Division 7 (commencing with Section 13000) of the Water Code.

(B) Chapter 6.5 (commencing with Section 25100), Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), or Chapter 6.8 (commencing with Section 25300).

(C) Any other state or local law providing liability for a remedial action for a release of a hazardous material.

(2) The written determination of completion shall be invalid, and the immunities provided by this section cease to apply if an oversight agency determines that any of the following applies:

(A) Monitoring, testing, or analysis of the property subsequent to the issuance of the written determination of completion indicates that the remedial action standards and objectives were not achieved or are not being maintained.

(B) One or more of the conditions, restrictions, or limitations imposed on the property as part of the remediation or written determination of completion are violated.

(C) Site monitoring or operation and maintenance activities that are required as part of the remedial action or written determination of completion for the property are not adequately funded or are not properly carried out.

(D) A hazardous materials release is discovered at the property that was not the subject of the site investigation and remedial action for which the written determination of completion was issued.

(E) A material change in the facts known to the oversight agency at the time the written determination of completion was issued, or new

facts, cause the oversight agency to find that further investigation and remedial action are required in order to prevent a significant risk to human health and safety or to the environment.

(F) A local agency or responsible party induced the oversight agency to issue the written determination of completion by fraudulent, negligent or intentional nondisclosure of information or misrepresentation.

(b) Upon an oversight agency's approval of a remediation plan pursuant to the oversight agency's authority under any applicable state law and this chapter, the director of the department, or the executive director of the regional board, as appropriate, shall acknowledge in writing that, upon proper completion of the site investigation and remedial action in accordance with the approved remediation plan and upon issuance of a written determination of completion by the oversight agency, the immunity provided by subdivision (a) shall apply to the local agency.

(c) Upon satisfactory completion of the site investigation and remedial action in accordance with the approved remediation plan, and upon issuance of a written determination of completion by the oversight agency to the local agency, the immunity provided by subdivision (a) extends to all of the following, but only for the hazardous materials release specifically identified in the approved remediation plan and not for any subsequent release or any release not specifically identified in the approved remediation plan:

(1) Any employee or agent of the local agency, including an instrumentality of the local agency authorized to exercise some, or all, of the powers of the local agency and any employee or agent of the instrumentality.

(2) Any person who enters into an agreement with a local agency for the development of a property, if the agreement requires the person acquiring the property to remediate a hazardous materials release with respect to that property.

(3) Any person who acquires the property after a person has entered into an agreement with the local agency for development of other uses of the property as described in paragraph (2).

(4) Any person who provided financing to a person specified in paragraph (2) or (3).

(d) (1) Notwithstanding any other provision of law, the immunity provided by this section does not extend to any of the following:

(A) Any person who is a responsible party for the release before entering into an agreement, acquiring property, or providing financing, as specified in subdivision (c).

(B) Any person for any subsequent release of a hazardous material or any release of a hazardous material not specifically identified in the approved remediation plan.

(C) Any contractor who prepares the remediation plan, or conducts the remedial action.

(D) Any person who obtains a remediation plan approval or a written determination of completion under this chapter by fraud, negligent or intentional nondisclosure, or misrepresentation, and any person who knows before the approval or determination is obtained, or before the person enters into an agreement, acquires the property, or provides financing, that the approval or determination was obtained by these means.

(E) Any person, including, but not limited to, the local agency, that engages in gross negligence with respect to the site investigation or remediation of the property.

(2) Notwithstanding any other provision of law, the immunity provided in this section does not apply to, limit, alter, or restrict any of the following:

(A) Any cause of action by a local agency or any other party against the person, firm, or entity responsible for the hazardous materials release that is the subject of the site investigation and remedial action taken by the local agency or other person immune from liability pursuant to this section.

(B) Any action for personal injury, property damage, or wrongful death.

(e) The immunity provided by this section shall be provided in addition to any other immunity provided by existing law.

25402.3. (a) Nothing in this chapter shall be construed to authorize a local agency to require a property owner or operator to develop or redevelop a property, or to require a property owner or operator to undertake a site investigation or remedial action that differs from what has been required or approved by the oversight agency.

(b) Nothing in this chapter shall be construed as a limitation on a local agency's land use authority.

(c) Notwithstanding Section 25402.1, nothing in this chapter affects the obligation of a school district to obtain the approval of the department regarding a schoolsite subject to Section 17210, 17210.1, 17213, or 17213.1 of the Education Code.

(d) Except as provided in Section 25402.1, this chapter does not affect the authority of the department, the State Water Resources Control Board, the regional boards, the Department of Fish and Game, or the Attorney General to pursue any existing legal, equitable, or administrative remedies pursuant to state or federal law.

SEC. 2. Section 57008 is added to the Health and Safety Code, to read:

57008. (a) For purposes of this section, the following definitions apply:

(1) ''Agency'' means the California Environmental Protection Agency.

(2) ''Contaminant'' means all of the following:

(A) A substance listed in Tables II and III of subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 66261.24 of Title 22 of the California Code of Regulations.

(B) The five halogenated hydrocarbon industrial solvents that, in the experience of the State Water Resources Control Board and the Department of Toxic Substances Control are most commonly found as contaminants at sites subject to remediation under the Carpenter-Presley-Tanner Hazardous Substances Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20) and the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(C) Ten hazardous substances not included under subparagraphs (A) and (B) that, in the experience of the Department of Toxic Substances Control and the State Water Resources Control Board, are most commonly found as contaminants at sites subject to remediation under the Carpenter-Presley-Tanner Hazardous Substances Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20) and the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(3) ''Screening number'' means the concentration of a contaminant published by the agency as an advisory number pursuant to the process established in subdivisions (b) and (c). A screening number is solely an advisory number, and has no regulatory effect, and is published solely as a reference value that may be used by citizen groups, community organizations, property owners, developers, and local government officials to estimate the degree of effort that may be necessary to remediate a contaminated property. A screening number may not be construed as, and may not serve as, a level that can be used to require an agency to determine that no further action is required or a substitute for the cleanup level that is required to be achieved for a contaminant on a contaminated property. The public agency with jurisdiction over the remediation of a contaminated site shall establish the cleanup level for a contaminant pursuant to the requirements and the procedures of the applicable laws and regulations that govern the remediation of that contaminated property and the cleanup level may be higher or lower than a published screening number.

(b) (1) During the same period when the agency is carrying out the pilot study required by Section 57009 and preparing the informational document required by Section 57010, the agency shall initiate a scientific peer review of the screening levels published in Appendix 1 of Volume 2 of the technical report published by the San Francisco

Regional Water Quality Control Board entitled ''Application of Risk-Based Screening Levels and Decision-Making to Sites with Impacted Soil and Groundwater (Interim Final-August 2000).'' The agency shall conduct the scientific peer review process in accordance with Section 57004, and shall limit the review to those substances specified in paragraph (2) of subdivision (a). The agency shall complete the peer review process on or before December 31, 2004.

(2) The agency, in cooperation with the Department of Toxic Substances Control, the State Water Resources Control Board, and the Office of Environmental Health Hazard Assessment, shall publish a list of screening numbers for contaminants listed in paragraph (2) of subdivision (a) for the protection of human health and safety, and shall report on the feasibility of establishing screening numbers to protect water quality and ecological resources. The agency shall determine the screening numbers using the evaluation set forth in Section 25356.1.5 and the results of the peer review, and shall use the most stringent hazard criterion established pursuant to Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. 300.400 et seq.), as amended. The agency shall set forth separate screening levels for unrestricted land uses and a restricted, nonresidential use of land. In determining each screening number, the agency shall consider all of the following:

(A) The toxicology of the contaminant, its adverse effects on human health and safety, biota, and its potential for causing environmental damage to natural resources, including, but not limited to, beneficial uses of the water of the state, including sources of drinking water.

(B) Risk assessments that have been prepared for the contaminant by federal or state agencies pursuant to environmental or public health laws, evaluations of the contaminant that have been prepared by epidemiological studies and occupational health programs, and risk assessments or other evaluations of the contaminant that have been prepared by governmental agencies or responsible parties as part of a project to remediate a contaminated property.

(C) Cleanup levels that have been established for the contaminant at sites that have been, or are being, investigated or remediated under Chapter 6.8 (commencing with Section 25300) of Division 20, or cleaned up or abated under Division 7 (commencing with Section 13000) of the Water Code or under any other remediation program administered by a federal or local agency.

(D) Screening numbers that have been published by other agencies in the state, in other states, and by federal agencies.

(E) The results of external scientific peer review of the screening numbers made pursuant to Section 57004.

(c) (1) Before publishing the screening numbers pursuant to subdivision (b), the agency shall conduct two public workshops, one in the northern part of the state and the other in the southern part of the state, to brief interested parties on the scientific and policy bases for the development of the proposed screening numbers and to receive public comments.

(2) Following publication of the screening numbers pursuant to subdivision (b), the agency shall conduct three public workshops in various regions of the state to discuss the screening numbers and to receive public comments. The agency shall select an agency representative who shall serve as the chairperson for the workshops, and the agency shall ensure that ample opportunity is available for public involvement in the workshops. The deputy secretary for external affairs shall actively seek out participation in the workshops by citizen groups, environmental organizations, community-based organizations that restore and redevelop contaminated properties for park, school, residential, commercial, open-space or other community purposes, property owners, developers, and local government officials.

(d) Following the workshops required by subdivision (c), the agency shall revise the screening numbers as appropriate. The agency shall, from time to time, revise the screening numbers as necessary as experience is gained with their use and shall add screening numbers for contaminants to the list as information concerning remediation problems becomes available.

(e) The agency shall publish a guidance document for distribution to citizen groups, community-based organizations, property owners, developers, and local government officials that explains how screening numbers may be used to make judgments about the degree of effort that may be necessary to remediate contaminated properties, to facilitate the restoration and revitalization of contaminated property, to protect the waters of the state, and to make more efficient and effective decisions in local-level remediation programs.

(f) Nothing in this section affects the authority of the Department of Toxic Substances Control, the State Water Resources Control Board, or a regional water quality control board to take action under any applicable law or regulation regarding a release or threatened release of hazardous materials.

SEC. 3. Section 57009 is added to the Health and Safety Code, to read:

57009. For purposes of this section, the following terms have the following meanings:

(1) ''Agency'' means the California Environmental Protection Agency.

(2) ''Contaminated property'' means a property located in the study area that is, or may be, subject to remediation pursuant to Chapter 6.10 (commencing with Section 25401) of Division 20 .

(3) ''Pilot screening numbers'' means the levels published in Appendix 1 of Volume 2 of the technical report, except that, for purposes of the study required by this section, the levels published in Appendix 1 may be used only as informational screening numbers, as provided in paragraph (3) of subdivision (a) of Section 57008 , and in a manner consistent with the technical report.

(4) ''Study area'' means the Los Angeles, Santa Ana, and San Diego regions, as established pursuant to Section 13200 of the Water Code.

(5) ''Technical report'' means the technical report published by the San Francisco Regional Water Quality Control Board entitled ''Application of Risk-Based Screening Levels and Decision-Making to Sites with Impacted Soil and Groundwater (Interim Final-August 2000)'' and any updates to the technical report.

(b) The agency shall conduct a study to evaluate the usefulness of pilot screening numbers in encouraging remediation at contaminated properties in the study area. The agency shall conduct the study in accordance with the requirements of subdivision (c) and shall develop information that bears on all of the following issues:

(1) The extent to which the pilot screening numbers are an adequate basis for estimating the degree of effort that may be necessary to remediate contaminated properties.

(2) Whether the availability of the pilot screening numbers as information provides an adequate basis for seeking funding from public or private sector sources to evaluate the feasibility of remediating a contaminated property and restoring it to productive use.

(3) The stages in the remediation process for which the pilot screening numbers are of the most use.

(4) The types of information derived from site investigations that are most useful, when combined with the pilot screening numbers, in making decisions concerning the feasibility of remediation of contaminated properties.

(5) Whether the availability of pilot screening numbers as information enables a person interested in the remediation of a contaminated property to determine, within an acceptable range, the relationship between the estimated cost of remediation of the property and the economic and social benefits that may derive from the property if it is restored to any of its reasonably foreseeable uses.

(c) The agency shall carry out the study required by subdivision (b) in the study area over the period commencing on March 1, 2002, until March 1, 2004. On or before June 30, 2004, the agency shall do all of the following:

(1) Prepare a brief document that explains what are screening numbers, what is the relationship of screening numbers to regulatory cleanup levels, and how screening numbers may be used to make judgments concerning the feasibility of restoring a contaminated property to productive use, and the degree of effort that may be required to remediate the property.

(2) Post the explanatory document prepared pursuant to paragraph (1), the technical report, and updates to the technical report, on the Internet Web sites maintained by the Department of Toxic Substances Control and by the California regional water quality control boards that have jurisdiction in the study area.

(3) Identify 25 contaminated properties in the study area that are remediated during the test period of March 1, 2002, until March 1, 2004, to determine the effects of the availability of the pilot screening numbers as information on the course of remediation and revitalization of contaminated properties and on assisting persons involved with the remediation to make meaningful decisions concerning the feasibility and effectiveness of remediation activities and assess whether the pilot screening numbers were more or less stringent than the required cleanup levels.

(d) The agency may not include in the pilot study more than 25 remediated contaminated properties in the study area.

(e) The study required by this section does not create any legal or regulatory authorization to use the pilot screening numbers. The pilot screening numbers are only available as information.

(f) The agency shall evaluate the information developed by the study required by this section, use the information as appropriate to carry out the requirements of Section 57008 , and, to the extent the information is timely, provide the information and the evaluation to the contractor preparing the study required by Section 57010.

(g) The agency shall post the information developed by the study required by this section and the information required under paragraph (2) of subdivision (c) on its Internet Web site.

(h) Nothing in this section affects the authority of the Department of Toxic Substances Control, the State Water Resources Control Board, or a regional water quality control board to take action under any applicable law or regulation regarding a release or threatened release of hazardous materials.

SEC. 4. Section 57010 is added to the Health and Safety Code, to read:

57010. (a) On or before January 1, 2003, the California Environmental Protection Agency shall publish an informational document to assist citizen groups, community-based organizations, interested laypersons, property owners, local government officials,

developers, environmental organizations, and environmental consultants to understand the factors that are taken into account, and the procedures that are followed, in making site investigation and remediation decisions under the Carpenter-Presley-Tanner Hazardous Substances Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 ) and under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

(b) The agency shall make the informational document required by this section available to any person who requests it at no charge and shall also post the public information manual on the agency's Internet Web site. The agency shall update both the printed informational document and the Web site at appropriate intervals as new legislation or revised policies affect the administration of the Carpenter-Presley-Tanner Hazardous Substances Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 ) and the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code).

SEC. 5. It is the intent of the Legislature that funds be appropriated to the California Environmental Protection Agency in the annual Budget Act or in another measure to implement paragraph (2) of subdivision (b) and subdivisions (c) to (e), inclusive, of Section 57008 of, and Section 57009 of, the Health and Safety Code. The agency shall expend existing peer review funds appropriated to review hazardous substance exposure levels to complete the peer review process set forth in paragraph (1) of subdivision (b) of Section 57008 and to make the results of the peer review public, and shall expend existing funds appropriated for public informational purposes to implement Section 57010. After the agency, or any board, office, or department within the agency, has expended the funds authorized by this section, the agency, or any board, office, or department within the agency, is not required to take any further action to implement Sections 57008 and 57009 of the Health and Safety Code, until the Legislature appropriates funds in the annual Budget Act or in another measure for those purposes.

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## CHAPTER 765

An act to amend and renumber Sections 72000, 72001, 72001.5, 72002, 72003, and 72004 of, to add the heading of Part 3 (commencing with Section 71110) to Division 34 of, and to repeal the heading of Part 3 (commencing with Section 72000) of Division 34 of, the Public Resources Code, relating to the environment.

[Approved by Governor October 11, 2001. Filed with
Secretary of State October 12, 2001.]

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

SECTION 1. The heading of Part 3 (commencing with Section 71110) is added to Division 34 of the Public Resources Code, to read:

PART 3. ENVIRONMENTAL JUSTICE

SEC. 2. The heading of Part 3 (commencing with Section 72000) of Division 34 of the Public Resources Code is repealed.

SEC. 3. Section 72000 of the Public Resources Code is amended and renumbered to read:

71110. The California Environmental Protection Agency, in designing its mission for programs, policies, and standards, shall do all of the following:

(a) Conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state.

(b) Promote enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations in the state.

(c) Ensure greater public participation in the agency's development, adoption, and implementation of environmental regulations and policies.

(d) Improve research and data collection for programs within the agency relating to the health of, and environment of, people of all races, cultures, and income levels, including minority populations and low-income populations of the state.

(e) Coordinate its efforts and share information with the United States Environmental Protection Agency.

(f) Identify differential patterns of consumption of natural resources among people of different socioeconomic classifications for programs within the agency.

(g) Consult with and review any information received from the Working Group on Environmental Justice established to assist the California Environmental Protection Agency in developing an agencywide strategy pursuant to Section 71113 that meets the requirements of this section.

SEC. 4. Section 72001 of the Public Resources Code is amended and renumbered to read:

71111. On or before January 1, 2001, the California Environmental Protection Agency shall develop a model environmental justice mission statement for boards, departments, and offices within the agency. For purposes of this section, environmental justice has the same meaning as defined in subdivision (c) of Section 65040.12 of the Government Code.

SEC. 5. Section 72001.5 of the Public Resources Code is amended and renumbered to read:

71112. In developing the model environmental justice mission statement pursuant to Section 71111, the California Environmental Protection Agency shall consult with, review, and evaluate any information received from the Working Group on Environmental Justice established pursuant to Section 71113.

SEC. 6. Section 72002 of the Public Resources Code is amended and renumbered to read:

71113. (a) On or before January 1, 2002, the Secretary for Environmental Protection shall convene a Working Group on Environmental Justice to assist the California Environmental Protection Agency in developing, on or before July 1, 2002, an agencywide strategy for identifying and addressing any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice.

(b) The working group shall be composed of the Secretary for Environmental Protection, the Chairs of the State Air Resources Board, the California Integrated Waste Management Board, and the State Water Resources Control Board, the Director of Toxic Substances Control, the Director of Pesticide Regulation, the Director of Environmental Health Hazard Assessment, and the Director of Planning and Research.

(c) The working group shall do all of the following on or before April 1, 2002:

(1) Examine existing data and studies on environmental justice, and consult with state, federal, and local agencies and affected communities.

(2) Recommend criteria to the Secretary for Environmental Protection for identifying and addressing any gaps in existing programs, policies, or activities that may impede the achievement of environmental justice.

(3) Recommend procedures and provide guidance to the California Environmental Protection Agency for the coordination and implementation of intraagency environmental justice strategies.

(4) Recommend procedures for collecting, maintaining, analyzing, and coordinating information relating to an environmental justice strategy.

(5) Recommend procedures to ensure that public documents, notices, and public hearings relating to human health or the environment are concise, understandable, and readily accessible to the public. The recommendation shall include guidance for determining when it is

appropriate for the California Environmental Protection Agency to translate crucial public documents, notices, and hearings relating to human health or the environment for limited-English-speaking populations.

(6) Hold public meetings to receive and respond to public comments regarding recommendations required pursuant to this section, prior to the finalization of the recommendations. The California Environmental Protection Agency shall provide public notice of the availability of draft recommendations at least one month prior to the public meetings.

(7) Make recommendations on other matters needed to assist the agency in developing an intraagency environmental justice strategy.

SEC. 7. Section 72003 of the Public Resources Code is amended and renumbered to read:

71114. The Secretary for Environmental Protection shall, on or before January 1, 2002, convene an advisory group to assist the working group described in Section 71113 by providing recommendations and information to, and serving as a resource for, the working group. The Secretary for Environmental Protection shall appoint members to the advisory group according to the following categories:

(a) Two representatives of local or regional land use planning agencies.

(b) Two representatives from air districts.

(c) Two representatives from certified unified program agencies (CUPAs).

(d) Two representatives from environmental organizations.

(e) Three representatives from the business community, one from a small business and two from a large business, except that two of the representatives of the business community may be from an association that represents small or large businesses. As used in this subdivision, ''small business'' has the meaning given that term by subdivision (c) of Section 1028.5 of the Code of Civil Procedure, and a large business is any business other than a small business.

(f) Two representatives from community organizations. The advisory group may form subcommittees to address specific types of environmental program areas. The California Environmental Protection Agency shall provide a reasonable per diem for attendance at advisory committee meetings by advisory committee members from nonprofit organizations.

SEC. 8. Section 71114.1 is added to the Public Resources Code, to read:

71114.1. After the California Environmental Protection Agency develops the strategy pursuant to Section 71113 and before December 31, 2003, each board, department, and office within the agency shall, in coordination with the Secretary for Environmental Protection and the

Director of the Office of Planning and Research, review its programs, policies, and activities and identify and address any gaps in its existing programs, policies, or activities that may impede the achievement of environmental justice.

SEC. 9. Section 72004 of the Public Resources Code is amended and renumbered to read:

71115. The Secretary for Environmental Protection shall, not later than January 1, 2004, and every three years thereafter, prepare and submit to the Governor and the Legislature a report on the implementation of this part.

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## CHAPTER 766

An act to amend Sections 335, 337, and 341.2 of the Public Utilities Code, relating to public utilities.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 335 of the Public Utilities Code, as amended by Section 1 of Chapter 1 of the 2001-02 First Extraordinary Session, is amended to read:

335. In order to ensure that the interests of the people of California are served, a five-member Electricity Oversight Board is hereby created as provided in Section 336. For purposes of this chapter, any reference to the Oversight Board shall mean the Electricity Oversight Board. Its functions shall be all of the following:

(a) To oversee the Independent System Operator and the Power Exchange.

(b) To determine the composition and terms of service and to exercise the exclusive right to decline to confirm the appointments of specific members of the governing board of the Power Exchange.

(c) To serve as an appeal board for majority decisions of the Independent System Operator governing board, as they relate to matters subject to exclusive state jurisdiction, as specified in Section 339.

(d) Those members of the Power Exchange governing board whose appointments the Oversight Board has the exclusive right to decline to confirm include proposed governing board members representing agricultural end users, industrial end users, commercial end users, residential end users, end users at large, nonmarket participants, and public interest groups.

(e) To investigate any matter related to the wholesale market for electricity to ensure that the interests of California's citizens and consumers are served, protected, and represented in relation to the availability of electric transmission and generation and related costs, during periods of peak demand.

SEC. 2. Section 337 of the Public Utilities Code, as amended by Section 3 of Chapter 1 of the 2001-02 First Extraordinary Session, is amended to read:

337. (a) The Independent System Operator governing board shall be composed of a five-member independent governing board of directors appointed by the Governor and subject to confirmation by the Senate. Any reference in this chapter or in any other provision of law to the Independent System Operator governing board means the independent governing board appointed under this subdivision.

(b) A member of the independent governing board appointed under subdivision (a) may not be affiliated with any actual or potential participant in any market administered by the Independent System Operator.

(c) (1) All appointments shall be for three-year terms.

(2) There is no limit on the number of terms that may be served by any member.

(d) The Oversight Board shall require the articles of incorporation and bylaws of the Independent System Operator to be revised in accordance with this section, and shall make filings with the Federal Energy Regulatory Commission as the Oversight Board determines to be necessary.

(e) For the purposes of the initial appointments to the Independent System Operator governing board, as provided in subdivision (a), the Governor shall appoint one member to a one-year term, two members to a two-year term, and two members to a three-year term.

SEC. 3. Section 341.2 of the Public Utilities Code, as amended by Section 4 of Chapter 1 of the 2001-02 First Extraordinary Session, is amended to read:

341.2. The Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) applies to meetings of the Oversight Board. In addition to the allowances of that act, the Oversight Board may hold a closed session to consider the appointment of one or more candidates to the governing board of the Power Exchange, deliberate on matters involving the removal of a member of the governing board of the Power Exchange, or to consider a matter based on information that has received a grant of confidential status pursuant to regulations of the

Oversight Board, provided that any action taken on such a matter shall be taken by vote in an open session.

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## CHAPTER 767

An act to amend Sections 23010, 26529, 26802.5, 60204, and 76224 of the Government Code, relating to counties and districts.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 23010 of the Government Code is amended to read:

23010. (a) Pursuant to a resolution adopted by its board of supervisors, a county may lend any of its available funds to any community services district, county waterworks district, mosquito abatement district, pest abatement district, fire protection district, flood control and water conservation district, recreation and park district, regional park district, regional park and open-space district, regional open-space district, resort improvement district, or public cemetery district located wholly within the county, if its funds are or when available will be in the custody of the county or any officer of the county, in order to enable the district to perform its functions and meet its obligations. The loan shall not exceed 85 percent of the district's anticipated revenue for the fiscal year in which it is made or for the next ensuing fiscal year, and shall be repaid out of that revenue prior to the payment of any other obligation of the district.

(b) Pursuant to a resolution adopted by its board of supervisors, a county may loan any of its available funds to a special district, in order to enable the district to perform its functions and meet its obligations. The loan shall not exceed 85 percent of the special district's anticipated property tax revenue projected to be generated for the fiscal year in which it is made or for the next ensuing fiscal year within that portion of the district's territory which is located within the county. The loan shall be repaid out of any available revenue of the special district prior to the payment of any other obligation of the district.

For purposes of this subdivision, ''special district'' means a special district, as defined in Section 54775, which is located in more than one county.

(c) The board of supervisors may borrow funds from the county or from other garbage disposal districts, not to exceed 85 percent of the

district's anticipated revenue for the fiscal year in which they are borrowed or for the next ensuing fiscal year. In levying taxes or prescribing and collecting fees or charges as authorized by this division, the board of supervisors may raise sufficient revenues to repay the loans.

The board of supervisors may lend available district funds to another garbage disposal district, subject to the terms and conditions set forth in this section.

Nothing contained in this section shall prohibit the board of supervisors from borrowing funds from banks or other financial institutions when the best interests of the district are served thereby.

(d) Notwithstanding any other provisions of law, funds, when borrowed by a garbage disposal district pursuant to subdivision (c), shall forthwith increase the appropriations of the district for which they are needed. The governing body of the entity from which the funds are borrowed may specify the date and manner in which the funds shall be repaid. The loan shall not exceed 85 percent of the district's anticipated revenue for the fiscal year in which it is made or for the next ensuing fiscal year, and shall be repaid out of that revenue prior to the payment of any other obligation of the district.

(e) The district shall pay interest on all funds borrowed from the county at the same rate that the county applies to funds of the district on deposit with the county.

SEC. 2. Section 26529 of the Government Code is amended to read:

26529. (a) In counties that have a county counsel, the county counsel shall discharge all the duties vested in the district attorney by Sections 26520, 26522, 26523, 26524, and 26526. The county counsel shall defend or prosecute all civil actions and proceedings in which the county or any of its officers is concerned or is a party in his or her official capacity. Except where the county provides other counsel, the county counsel shall defend as provided in Part 7 (commencing with Section 995) of Division 3.6 of Title 1 of the Government Code any action or proceeding brought against an officer, employee, or servant of the county.

(b) Notwithstanding any other provision of law, the County Counsel of the County of Solano may, and when directed by the board of supervisors of that county shall, bring a civil action when the county, or any of its officers, has a cause of action to abate a public nuisance in the county. The County Counsel and the District Attorney of Solano County have the concurrent right to bring an action to abate a public nuisance pursuant to this subdivision.

SEC. 3. Section 26802.5 of the Government Code is amended to read:

26802.5. In the Counties of El Dorado, Kings, Lake, Marin, Merced, Monterey, Riverside, San Joaquin, Solano, and Tulare, a

registrar of voters may be appointed by the board of supervisors in the same manner as other county officers are appointed. In those counties, the county clerk is not ex officio registrar of voters, and the registrar of voters shall discharge all duties vested by law in the county elections official that relate to and are a part of the election procedure.

SEC. 4. Section 60204 of the Government Code is amended to read:

60204. For the purposes of this chapter, the terms ''special district'' and ''district'' also include the South Coast Air Quality Management District, the Bay Area Air Quality Management District, and the San Joaquin Valley Air Pollution Control District, and the term ''legislative body'' also includes the boards of the districts.

SEC. 5. Section 76224 of the Government Code is amended to read:

76224. Deposits to the Courthouse Construction Fund established in Merced County pursuant to Section 76100 and the Criminal Justice Facilities Construction Fund established in Merced County pursuant to Section 76101 shall continue through and including the 30th year after the initial year in which the surcharge is collected or the 30th year after any borrowings are made for any construction under those sections, whichever comes later.

SEC. 6. With respect to Section 3, the Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of Lake County. The facts constituting the special circumstances include the need to reorganize the structure and duties of county officers to reduce costs and increase productivity within the county government.

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## CHAPTER 768

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

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

I have signed Senate Bill 480 with a deletion. This bill would have appropriated $100,000 from the General Fund to the Department of Parks and Recreation for a local assistance grant to the California Military Museum.

The Museum currently operates on funds raised by its Foundation, donations, and occasional legislative appropriations. If it does not receive funds this year, it could close its doors. The Museum provides a vital service to the state in honoring the men and women who have served in the military.

Although I have deleted the General Fund appropriation, I am directing the Department of Parks and Recreation to allocate $100,000 from existing funds to the California Military Museum to ensure their continued operations.

GRAY DAVIS, Governor

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

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

(a) In 1981, the State of California authorized the Adjutant General of the California National Guard to establish a military museum under Section 179 of the Military and Veterans Code.

(b) In 1983, the California Military Museum Foundation established a military museum in historic Old Sacramento near the California State Railroad Museum.

(c) In 1993, the Legislature transferred Civil War artifacts from the State Capitol to the California Military Museum under Section 179.5 of the Military and Veterans Code.

(d) In 1995, the California Military Museum was designated as the official military museum of California by the Governor.

(e) In 2000, Chapter 16 of the Statutes of 2000 authorized the transfer of unclaimed military awards and decorations from the Controller to the California Military Museum.

(f) The California Military Museum maintains, preserves, and displays military artifacts and equipment at California National Guard facilities located in Los Alamitos, Camp San Luis Obispo, and Camp Roberts.

(g) The California Military Museum is the official United States Department of the Army historical holding for the California National Guard, as designated by the United States Army Center for Military History.

(h) During the decade of the 1990s, the closing of numerous military installations of all services in California, including Ford Ord, the Presidio of San Francisco, and Mather Air Force Base caused numerous historical California military memorabilia and collections to be lost, scattered, or placed in storage and created a substantially increased demand on the California Military Museum in terms of space, staff, and financial obligations.

(i) California remains the state with both the largest number of military veterans and military retirees in the United States, and this situation, that began after World War II, continues today.

(j) Much of the history of California has been involved with the wars fought by the United States in Europe, the Pacific Rim, and the Middle East.

(k) The California Military Museum currently has for display over 30,000 artifacts that include weapons, uniforms, unit records, battle flags, medals, and other information of great historical significance from the early beginnings of Spanish California, and continuing through the

Bear Flag Republic, the American Civil War, the Spanish-American War, and all military wars and emergencies of the 20th century.

(*l*) It is in the best interest of all Californians and the nation that urgent steps be taken to preserve and protect the military artifacts and memorabilia that make up California's military history.

SEC. 2. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the Department of Parks and Recreation for a local assistance grant to the California Military Museum.

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 funds to the California Military Museum for the entire 2001–02 fiscal year, beginning July 1, 2001, it is necessary that this act take effect immediately.

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## CHAPTER 769

An act to amend Sections 42400.4, 42801, 42810, 42821, 42822, 42823, 42824, 42840, 42841, 42842, 42843, 42860, 42870, and 43021, and to add Sections 42410, 42801.1, and 43023 to, the Health and Safety Code, relating to air pollution.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. It is the intent of the Legislature in the enactment of this act to do all of the following:

(a) Provide the State Air Resources Board with an alternative to pursuing civil penalties through the court system by allowing the state board to pursue penalties for less significant violations through an administrative hearing process.

(b) Provide administrative penalty authority only for those categories of violations for which the state board maintains the authority to impose civil penalties.

(c) It is not the intent of the Legislature to modify the level of penalty impositions beyond historic levels.

SEC. 2. Section 42400.4 of the Health and Safety Code is amended to read:

42400.4. (a) In any district where a Title V permit program has been fully approved by the federal Environmental Protection Agency, any person who knowingly violates any federally enforceable permit condition or any fee or filing requirement applicable to a Title V source is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000).

(b) In any district in which a Title V permit program has been fully approved by the federal Environmental Protection Agency, any person who knowingly makes any false material statement, representation, or certification in any form or in any notice or report required of a Title V source of a federally enforceable permit requirement, or who knowingly renders inaccurate any monitoring device or method required of a Title V source, is guilty of a misdemeanor and is subject to a fine of not more than ten thousand dollars ($10,000).

(c) The recovery of civil penalties pursuant to Section 42402, 42402.1, 42402.2, or 42402.3 precludes prosecution pursuant to this section for the same offense. When a district refers a violation to a prosecuting agency, the filing of a criminal complaint is grounds requiring the dismissal of any civil action brought pursuant to this article for the same offense.

(d) Each day during any portion of which a violation of subdivision (a) or (b) occurs is a separate offense.

(e) This section shall not become operative in a district until the federal Environmental Protection Agency fully approves that district's Title V permit program.

(f) This section applies only to violations described in subdivisions (a) and (b) that are not otherwise subject to a fine of ten thousand dollars ($10,000) or more pursuant to Section 42400.1, 42400.2, or 42400.3.

SEC. 3. Section 42410 is added to the Health and Safety Code, to read:

42410. (a) As an alternative to seeking civil penalties under Sections 39674, 42401, 42402, 42402.1, 42402.2, and 42402.3 for a violation of regulations of the state board, the state board may impose an administrative penalty, as specified in this section. Any administrative penalty imposed under this section shall be imposed as an alternative to, and not in addition to, a civil penalty imposed pursuant to this article. No administrative penalty imposed by the state board pursuant to this section shall exceed the amount that the state board is authorized to seek as a civil penalty for the applicable violation, and no administrative penalty imposed pursuant to this section shall exceed ten thousand dollars ($10,000) for each day in which there is a violation up to a maximum of one hundred thousand dollars ($100,000) per penalty assessment proceeding.

(b) Nothing in this section restricts the authority of the state board to negotiate mutual settlements under any other penalty provision of law that exceeds ten thousand dollars ($10,000) for each day in which there is a violation of one hundred thousand dollars ($100,000) per penalty assessment proceeding.

(c) The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings established pursuant to Article 3 (commencing with Section 60065.1) and Article 4 (commencing with Section 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations, except that the hearings shall be conducted by an administrative law judge appointed by the Office of Administrative Hearings.

(d) Nothing in this section authorizes the state board to seek penalties for categories of violations for which the state board may not recover penalties in a civil action.

(e) If the state board imposes any administrative penalties pursuant to this section, the state board may not bring any action pursuant to, or rely upon, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.

(f) In determining the amount of any administrative penalty imposed pursuant to this section, the state board shall take into consideration all relevant circumstances, including, but not limited to, those factors specified in subdivision (b) of Section 42403.

(g) After an order imposing an administrative penalty becomes final pursuant to the hearing procedures identified in subdivision (c), and no petition for a writ of mandate has been filed within the time allotted for seeking judicial review of the order, the state board may apply to the Superior Court for the County of Sacramento for a judgment in the amount of the administrative penalty. The application, which shall include a certified copy of the final order of the administrative hearing officer, shall constitute a sufficient showing to warrant the issuance of the judgment.

(h) For any violation that is within the enforcement jurisdiction of both the state board and the districts, the state board may impose an administrative penalty pursuant to this section only if the district in which the violation has occurred has not commenced an enforcement action for that violation.

(i) This section is not intended, and shall not be construed, to grant the state board authority to assess an administrative penalty for any category of violation that was not subject to enforcement by the state board as of January 1, 2002.

(j) Any administrative penalty assessed pursuant to this section shall be paid to the State Treasurer for deposit in the General Fund.

(k) A party adversely affected by the final decision in the administrative hearing may seek independent judicial review by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure.

(*l*) This section shall only apply to violations that occur on or after January 1, 2002.

(m) On or before January 30, 2005, the state board shall prepare and submit to the Legislature and the Governor a report summarizing the administrative penalties imposed by the state board pursuant to this section for calendar years 2002, 2003, 2004, and 2005.

SEC. 4. Section 42801 of the Health and Safety Code is amended to read:

42801. The Legislature finds and declares all of the following:

(a) It is in the best interest of the State of California, the United States of America, and the earth as a whole, to encourage voluntary actions to achieve all economically beneficial reductions of greenhouse gas emissions from California sources.

(b) Mandatory greenhouse gas emissions reductions may be imposed on California sources at some future point, and in view of this, the state has a responsibility to use its best efforts to ensure that organizations that voluntarily inventory their emissions receive appropriate consideration for changes in emissions quantities made prior to the implementation of any mandatory programs.

(c) Past initiatives in the state that took early and responsible action to reduce air pollution and ozone smog have demonstrated political, economic, and technological leadership, and have proven to benefit the state.

(d) The state's tradition of environmental leadership should be recognized through the establishment of a registry to provide documentation of greenhouse gas emissions levels voluntarily achieved by sources in the state. The registry will provide participants an opportunity to register greenhouse gas emissions information in a consistent format using publicly reviewed and adopted procedures and protocols.

(e) The state hereby commits to use its best efforts to ensure that organizations that establish greenhouse gas emissions baselines and register emissions results that are certified in accordance with this chapter receive appropriate consideration under any future international, federal, or state regulatory scheme relating to greenhouse gas emissions. The state cannot guarantee that any regulatory regime relating to greenhouse gas emissions will recognize the baselines and annual results recorded in the registry.

(f) The state hereby commits to review future international or federal programs related to greenhouse gas emissions and to make reasonable

efforts to promote consistency between the state program and these programs and to reduce the reporting burden on participants, if changes to the state program are consistent with the goals and intent of Section 42810.

SEC. 5. Section 42801.1 is added to the Health and Safety Code, to read:

42801.1. For purposes of this chapter, the following terms have the following meanings:

(a) ''Annual emissions results'' means the participant's applicable data on the release of greenhouse gas emissions, both direct and indirect, from one particular year.

(b) ''Baseline'' means a datum against which to measure greenhouse gas emissions performance over time, usually annual emissions in a selected base year. For the purposes of this subdivision, the baseline shall start on or after January 1, 1990.

(c) ''Certification'' means the determination of whether a given participant's greenhouse gas emissions inventory (either baseline or annual result) has met a minimum quality standard and complied with an appropriate set of registry-approved procedures and protocols for submitting emissions inventory information. The process for certification of emissions results will be specified within the procedures and protocols approved for industry-specific emissions inventory reporting, and may involve a range of options depending upon the nature of the emissions, complexity of a company's facilities and operations, or both, and the procedures deemed necessary by the registry board to validate a participant's emissions information.

(d) ''De minimis emissions'' means emissions that are below a certain threshold, when summed across all applicable sources of the participating entity. The State Energy Resources Conservation and Development Commission shall recommend to the registry for adoption a threshold emissions level for each type of greenhouse gas emission that shall be considered de minimus.

(e) ''Emissions'' means the release of greenhouse gases into the atmosphere.

(f) (1) ''Emissions inventory'' means an accounting of the amount of greenhouse gases discharged into the atmosphere. It is generally characterized by all of the following factors:

(A) The chemical or physical identity of the pollutants included.

(B) The geographic area covered.

(C) The institutional entities covered.

(D) The time period over which emissions are estimated.

(E) The types of activities that cause emissions.

(2) An emissions inventory shall include sufficient documentation and supporting data to make transparent the underlying assumptions and calculations for all of the reported results.

(g) ''Greenhouse gases'' includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydroflurocarbons, perfluorocarbons, and sulfur hexafluoride.

(h) ''Material'' means any emission of greenhouse gas that is not de minimis.

SEC. 6. Section 42810 of the Health and Safety Code is amended to read:

42810. The purposes of the California Climate Action Registry shall be to do all of the following:

(a) Help various entities in the state to establish emissions baselines against which any future federal greenhouse gas emission reduction requirements may be applied.

(b) Encourage voluntary actions to increase energy efficiency and reduce greenhouse gas emissions.

(c) Enable participating entities to voluntarily record greenhouse gas emissions made after 1990 in a consistent format that is certified.

(d) Ensure that sources in the state receive appropriate consideration for certified emissions results under any future federal regulatory regime relating to greenhouse gas emissions.

(e) Recognize, publicize, and promote participants in the registry.

(f) Recruit broad participation in the process from all economic sectors and regions of the state.

SEC. 7. Section 42821 of the Health and Safety Code is amended to read:

42821. (a) The registry shall be governed by a seven-member board of directors, to be composed of all of the following members:

(1) The Secretary of the Resources Agency, or his or her designee.

(2) The Secretary for Environmental Protection, or his or her designee.

(3) Five public members representing business, local government, and public interest environmental organizations, to be appointed by the Governor for two-year terms, staggered so that, initially, three public members serve one-year terms and two members serve two-year terms. In the event of a vacancy, the Governor shall appoint a replacement public board member.

(b) The board of directors of the registry is responsible for ensuring that the registry fulfills the purposes established by this chapter and meets the financial, reporting, and operating requirements of its articles of incorporation. The board of directors shall appoint and supervise an executive director, who shall hire and direct staff.

(c) The board of directors shall adopt bylaws that ensure that, at each regularly scheduled meeting of the registry, there will be an opportunity for members of the public to comment on matters being considered by the registry, as specified on the registry meeting agenda.

SEC. 8. Section 42822 of the Health and Safety Code is amended to read:

42822. (a) The procedures and protocols for monitoring, estimating, calculating, reporting, and certifying greenhouse gas emissions established by, or approved pursuant to, this chapter shall be the only procedures and protocols recognized by the state for the purposes of the registry, as described in Section 42810. These procedures shall be, to the extent practicable, consistent with the methods and practices used for the statewide inventory of greenhouse gas emissions prepared by the State Energy Resources Conservation and Development Commission, as required by Section 25730 of the Public Resources Code.

(b) The registry shall adopt a schedule of fees and, after an initial startup period, charge participants for registry services to cover the reasonable costs of its operations.

SEC. 9. Section 42823 of the Health and Safety Code is amended to read:

42823. The registry shall perform all of the following functions:

(a) Provide participants with referrals to approved providers for technical assistance and advice, upon the request of a participant, on any or all of the following:

(1) Designing programs to establish greenhouse gas emissions baselines and to monitor, estimate, calculate, report, and certify greenhouse gas emissions.

(2) Establishing emissions reduction goals based on international or federal best practices for specific industries and economic sectors.

(3) Designing and implementing organization-specific plans that improve energy efficiency or utilize renewable energy, or both, and that are capable of achieving emission reduction targets.

(b) In coordination with the State Energy Resources Conservation and Development Commission, the registry shall adopt and periodically update a list of organizations recognized by the state as qualified to provide the detailed technical assistance and advice in subdivision (a) and assist participants in identifying and selecting providers that have expertise applicable to each participant's circumstances.

(c) Adopt procedures and protocols for certification of reported baseline emissions and emissions results. When adopting procedures and protocols for the certification, the registry shall consider the availability and suitability of simplified techniques and tools.

(d) Qualify third-party organizations that have the capability to certify reported baseline emissions and emissions results, and that are capable of certifying the participant-reported results as provided in this chapter.

(e) Adopt procedures and protocols, including a uniform format for reporting emissions baselines and emissions results to facilitate their recognition in any future regulatory regime.

(f) Maintain a record of all certified greenhouse gas emissions baselines and emissions results. Separate records shall be kept for direct and indirect emissions results. The public shall have access to this record, except for any portions of a participant's emissions results that a participant may deem confidential.

(g) Encourage organizations from various sectors of the state's economy, and those from various geographic regions of the state, to report emissions, establish baselines and reduction targets, and implement efficiency improvement and renewable energy programs to achieve those targets.

(h) Recognize, publicize, and promote participants.

(i) In coordination with the State Energy Resources Conservation and Development Commission and the State Air Resources Board, adopt industry-specific reporting metrics at one or more public meetings.

SEC. 10. Section 42824 of the Health and Safety Code is amended to read:

42824. Participation in the registry is voluntary, and participants may withdraw at any time. If participants cease, and then resume participation, they will be expected to fill in any interim emissions information or set a new baseline. Any entity conducting business in the state may register its emissions results, including emissions generated outside of the state, on an entitywide basis with the registry, and may utilize the services of the registry.

SEC. 11. Section 42840 of the Health and Safety Code is amended to read:

42840. (a) Participants shall utilize the following reporting procedures to establish a greenhouse gas emissions baseline, participants shall report their certified emissions for the most recent year for which they have complete energy use and fuel consumption data as specified in this chapter. Participants that have complete energy use or fuel consumption data for earlier years that can be certified may establish their baseline as any year beginning on or after January 1, 1990. After establishing baseline emissions, participants shall report their certified emissions results in each subsequent year in order to show changes in emissions levels with respect to their baseline year. Participants may report annual emission results without establishing an emissions baseline. Participants shall also report using industry-specific metrics

once the registry adopts an industry-specific metric for the industry in question.

(b) (1) Participants shall report direct emissions and indirect emissions separately. Direct emissions are those emissions from applicable sources that are under management control of a participating entity, including onsite combustion, fugitive noncombustion emissions, and vehicles owned and operated by the participant. Indirect emissions that are required to be reported by participants are those emissions embodied in net electricity and steam imports, including offsite steam generation and district heating and cooling. Participants are encouraged, but are not required, to report other indirect emissions based on guidance that is adopted by the registry.

(2) On or after January 1, 2004, the registry board, in coordination with the State Energy Resources Conservation and Development Commission, may revise the scope of indirect emission source types that are required to be reported by participants specified in paragraph (1) after a public workshop and review process conducted by the registry if all of the following requirements have been met.

(A) The State Energy Resources Conservation and Development Commission has approved that revision at a public hearing following a public workshop.

(B) Prior to approving that proposed revision, the commission determines all of the following:

(i) A reasonable and generally-accepted methodology exists that will enable participants to accurately estimate and report the emissions for the indirect source type in question.

(ii) The proposed revision will not create an unreasonable reporting burden on the participants.

(iii) The proposed revision is necessary to achieve the purposes listed in Section 42810.

(C) The registry, at any time it acts to revise the scope of indirect emission source types that are required to be reported by participants, establishes a timeframe for the phase in of the revised scope so that participants shall have at least four months before the start of the next annual reporting cycle that incorporates the revised scope.

(3) In cases of joint ownership, emissions are reported by the managing entity, unless the owners decide to report emissions on a pro rata basis.

(4) Participants shall not be required to report emissions of any greenhouse gas that is de minimis in quantity, when summed up across all applicable sources of the participating entity. The State Energy Resources Conservation and Development Commission shall recommend to the registry a definition of de minimis emissions that reasonably accounts for differences in the size, activities, and sources of

direct and indirect baseline emissions of participants, and is consistent with the goals and intent of subdivision (f) of Section 42801.

(c) (1) All participants shall report direct and indirect carbon dioxide ($CO_2$) emissions that are material to their operations.

(2) The registry shall also encourage participants to monitor and report emissions of the following gases:

(A) Hydrofluorocarbons (HFCs).

(B) Methane ($CH_4$).

(C) Oxides of nitrogen ($N_2O$).

(D) Perfluorocarbons (PFCs).

(E) Sulfur hexafluoride ($SF_6$).

(3) The report of information specified in paragraph (2) is optional for three years after a participant joins the registry. After participating in the registry for a total of three years, participants shall report emissions required by both paragraphs (1) and (2).

(4) Emissions of all gases under this subdivision shall be reported in mass units.

(d) The basic unit of participation in the registry shall be an entity in its entirety such as a corporation or other legally constituted body, any city or county, and each state government agency. The registry shall not record emissions baselines and reductions for individual facilities or projects, except to the extent they are included in an entity's emissions reporting.

(1) Corporations may report emissions baselines and annual emissions results from subsidiaries if the parent corporation is clearly defined.

(2) Participants shall report emissions from all of their applicable sources in the state when they initially register.

(3) Participants may, and are encouraged to, at any time, register emissions from all applicable sources based in the United States, so long as this reporting meets all the other requirements established by this chapter. Those participants with emissions in other states that report California emissions only may not be able to receive equal consideration for their emissions records in future national or international regulatory regimes relating to greenhouse gas emissions. In addition, participants with operations outside of the United States are encouraged to register their total worldwide emissions baselines and annual emissions results. Within three years, the registry shall review and report to the Legislature with a recommendation on whether the registry should require, rather than encourage, participants to report all of their greenhouse gas emissions in the United States, not just California emissions.

(4) To ensure that reported emissions reflect actual emissions, participants that outsource production or services shall report emissions associated with the outsourced activity, and remove these emissions

from their emissions baseline. The subcontracted entity, if it voluntarily chooses to participate in the registry shall report emissions associated with the outsourced activities it has taken over. Participants shall attest at least once each year that the entity has not outsourced any emissions, or that if it has, that all emissions associated with the outsourced activity have been reported and subtracted from the entity's baseline emissions.

(5) To prevent changes in vertical integration within corporations from leading to apparent emissions reductions when in fact no reductions have occurred, the registry shall treat mergers, acquisitions, and divestitures as follows:

(A) The emissions baselines of any merged or acquired entity shall be added together, and the registry shall treat the resulting entity as if it had been one corporation from the beginning.

(B) In divestitures, the emissions baselines of the affected corporations shall be split, with the effect that the registry shall treat them as if they had been separate corporations from the beginning. If the divested corporation is purchased by another firm, the registry shall treat that purchase as a merger with the purchasing corporation. If the divested corporation remains a separate entity after the divestiture, its registry baseline shall reflect the emissions associated with the entity's operations before the divestiture. Corporations that divest operations may allocate certified emissions results achieved prior to the divestiture among the divesting and the divested entities, and the registry shall adjust their baselines accordingly.

(C) Any adjustments for changes in vertical integration shall be verified in the annual emissions certifications required for recordation of emissions results.

(6) If a participant changes from statewide to national reporting under this program, changes to its baseline will be treated in a similar manner as changes in vertical integration as described in paragraph (5).

(7) To ensure that reported emissions accurately reflect shifts in operations to or from other states, the registry shall adopt, in consultation with the State Energy Resources Conservation and Development Commission, at a public meeting and following at least one public workshop, reporting procedures for participants that choose to report greenhouse emissions on a statewide basis that require participants to show both of the following:

(A) Changes in a participant's operations, such as a facility startup or shutdown, that result in a significant and long-term shift of greenhouse gas emissions from California to other states or from other states to California.

(B) The corresponding change in the participant's baseline.

SEC. 12. Section 42841 of the Health and Safety Code is amended to read:

42841. (a) To support the estimation, calculation, reporting, and certification of emissions in a consistent format, the registry shall adopt standardized forms that all participants shall use to calculate, report, and certify emissions, unless an alternative format is (1) reviewed and recommended by the State Energy Resources Conservation and Development Commission and the State Air Resources Board, and (2) adopted by the registry, and deemed to be consistent with the goals and intent of this chapter. In cooperation with the State Energy Resources Conservation and Development Commission, the registry shall review commonly available emissions tracking software to determine whether existing software packages are able to generate reports for the registry.

(b) The procedures established for all of the following shall conform to the requirements of Article 6 (commencing with Section 42870):

(1) Establishing electricity and fuel usage and for calculating associated emissions.

(2) Mass-balance calculations, stack testing, or continuous emissions monitoring of greenhouse gases from onsite fuel combustion are all acceptable ways of reporting greenhouse gases from onsite fuel combustion.

(3) Estimating, calculating, reporting, and certifying noncombustion emissions of the gases listed in paragraphs (1) and (2) of subdivision (c) of Section 42840.

(4) Collecting and maintaining data and records of energy, fuel, and chemical consumption sufficient to allow contemporaneous and ex post certification of direct and indirect emissions.

SEC. 13. Section 42842 of the Health and Safety Code is amended to read:

42842. (a) Participants registering baseline emissions and emissions results in the registry shall provide certification of their methodologies and results. The registry board may, upon recommendation of the State Energy Resources Conservation and Development Commission and the state board, following a public process, adopt simplified procedures to certify emissions results as appropriate. Participants shall follow registry-approved procedures and protocols in determining emissions, and supply the quantity and quality of information necessary to allow an independent ex post certification of the emissions baseline and emissions results reported under this program.

(b) The registry shall adopt a list of approved third-party organizations recognized as competent to certify emissions results as provided in this chapter. The process for evaluating and approving these organizations shall be developed in coordination with the State Energy Resources Conservation and Development Commission. The registry

may reopen the qualification process periodically in order for new organizations to be added to the approved list.

(c) As appropriate, the registry shall refer participants to the organization on the approved list described in subdivision (b).

(d) Where required by the registry for certification, organizations approved pursuant to subdivision (b) shall do all of the following:

(1) Evaluate whether the participant has a program, consistent with registry-approved procedures and protocols, in place for preparation and submittal of the information reported under this chapter.

(2) Check, during certification, the reasonableness of the emissions information being reported for a random sample of estimates or calculations.

(3) Summarize its review in a report to the board of directors, or equivalent governing body, of the participating entity, attesting to the existence of a program that is consistent with registry-approved procedures and protocols and the reasonableness of the reported emissions results and noting any exceptions, omissions, limitations, or other qualifications to their representations.

(e) In conducting certification for a participant under this program, the approved organization shall schedule any meeting or meetings with the participant in advance at one or more representative locations and allow the participant to control property access. The meetings shall be conducted in accordance with a protocol that is agreed upon in advance by the participant and the approved organization. The approved organization shall not perform facility inspection, direct measurement, monitoring, or testing unless authorized by the participant.

(f) To ensure the integrity and constant improvement of the registry program, the State Energy Resources Conservation and Development Commission shall perform on a random basis an occasional review and evaluation of participants' emissions reporting, certifications, and the reasonableness of the emissions information being reported for analysis of estimates or calculations. The commission shall report any findings in writing to the registry. The registry shall include a summary of these findings in the biennial report to the Governor and the Legislature required by Article 5 (commencing with Section 42860).

SEC. 14. Section 42843 of the Health and Safety Code is amended to read:

42843. Not later than July 1, 2003, and periodically thereafter, the registry shall evaluate and review the approaches to emissions reporting described in subdivision (b) of Section 42840, in light of knowledge gained from the actual practices of estimating, calculating, reporting, and certifying emissions, and, upon recommendation of the State Energy Resources Conservation and Development Commission following a

public process, may modify or revise reporting requirements as appropriate to further the purposes of this chapter.

SEC. 15. Section 42860 of the Health and Safety Code is amended to read:

42860. Not later than July 1, 2003, and biennially thereafter, the registry shall report to the Governor and the Legislature on the number of organizations participating in the registry, the percentage of the state's emissions represented by the participants in the registry, the reductions in greenhouse gas emissions achieved by those participants, and ways to make the registry more workable for participants that are consistent with the goals and intent of this chapter.

SEC. 16. Section 42870 of the Health and Safety Code is amended to read:

42870. The State Energy Resources Conservation and Development Commission shall do all of the following:

(a) Develop a process to identify and qualify third-party organizations approved to provide technical assistance and advice, upon the request of a participant in any or all of the following areas:

(1) Determining greenhouse gas emissions.

(2) Developing industry-specific emissions reduction targets.

(3) Developing and implementing efficiency improvement programs appropriate to various industries and economic sectors.

The process shall do all of the following:

(A) Define the minimum technical and organizational capabilities and other qualifications approved firms are required to meet.

(B) Call for applications or otherwise encourage interested organizations to submit their qualifications for review.

(C) Evaluate applicant organizations according to this list of qualification standards.

(D) Recommend, not later than six months following the first registry board meeting, specific organizations to the registry as qualified to provide the technical assistance functions of this chapter.

(E) Update the list of approved technical assistance providers periodically by doing all of the following:

(i) Reviewing the capabilities of already approved providers.

(ii) Reviewing applications of new providers.

(iii) Recommending to the registry specific organizations to be added to the approved list, and specific organizations no longer qualified to provide the technical assistance duties of this chapter.

(b) Develop or update certain emissions reporting metrics by doing all of the following:

(1) Review, in coordination with the State Air Resources Board, industry-specific greenhouse gas reporting metrics linked to or based on international or federal standards, as these become available

periodically, and advise the registry of its opinion as to whether the adoption of sectoral or industry-specific metrics complement the reporting procedures.

(2) By July 1, 2003, recommend to the registry for possible adoption a procedure for defining and measuring transportation-based emissions associated with registry participants' activities, including, but not limited to, shipping of products and materials, employee commuting, and purchased air travel.

(c) Develop, not later than six months following the first registry board meeting, guidance to the registry on all of the following processes to facilitate participation in the program:

(1) Recommendations for threshold emissions of each greenhouse gas that are considered de minimis to a participant's operations.

(2) Establishing entities' electricity usage and calculating $CO_2$ emissions associated with that usage.

(3) Establishing entities' fuel usage and calculating $CO_2$ emissions associated with that usage.

(4) Determining emissions from onsite fuel combustion.

(5) Determining the noncombustion emissions of the six greenhouse gases with which the registry is concerned, as applicable.

(6) Establishing procedures and protocols to certify greenhouse gas emissions baselines and emissions results.

(7) Collecting and maintaining data and records of energy, fuel, and chemical consumption sufficient to allow ex post certification of emission results of direct and indirect emissions on an entity-wide basis.

(d) Develop, not later than six months after the first meeting of the registry board, a process for qualifying third-party organizations recognized by the State of California as competent to certify the emissions results of the types of entities that may choose to participate in this registry, by doing all of the following:

(1) Developing a list of the minimum technical and organizational capabilities and other qualification standards that approved third-party organizations shall meet. Those qualifications shall include the ability to sign an opinion letter, for which they may be held financially at risk, and certifying the participant-reported emissions results as provided in this chapter.

(2) Publicizing an applications process or otherwise encouraging interested organizations to submit their qualifications for review.

(3) Evaluating applicant organizations according to the list of qualifications described in paragraph (1).

(4) Recommending specific third-party organizations to the registry as qualified to certify participants' actual emissions results in accordance with this chapter.

(5) Periodically updating the list of approved third-party organizations by doing any of the following:

(A) Reviewing the capabilities of approved organizations.

(B) Reviewing applications of organizations seeking to become approved.

(C) Recommending to the registry specific organizations to be added to the approved list, and specific organizations no longer qualified to perform the duties of this chapter.

(e) (1) Occasionally, and on a random basis, accompany third-party organizations on scheduled visits to observe and evaluate, during any certification visit, both the following:

(A) Whether the participant has a program, consistent with registry-approved procedures and protocols, in place for the preparation and submittal of the information required under this chapter.

(B) The reasonableness of the emissions information being reported for a sample of estimates or calculations.

(2) To help the registry report to the Legislature, the State Energy Resources Conservation and Development Commission shall report, in writing, to the registry on these findings to further ensure that reported emissions accurately reflect annual emissions of greenhouse gases.

(f) Review future international or federal programs related to greenhouse gas emissions, and make reasonable efforts to promote consistency between the state program and these programs, and to reduce the reporting burden on participants.

SEC. 17. Section 43021 of the Health and Safety Code is amended to read:

43021. (a) For purposes of this section, ''motor vehicle fuel distributor'' means any person who (1) refines, blends, or otherwise produces motor vehicle fuel, or (2) with an ownership interest in the fuel, transports or causes the transport of motor vehicle fuel at any point between a production or import facility and a retail outlet, or sells, offers for sale, or supplies motor vehicle fuel to motor vehicle fuel retailers.

(b) Any motor vehicle fuel distributor who conducts business within the state, annually on January 1, shall inform the state board in writing of the distributor's principal place of business, which shall be a physical address and not a post office box, and any other place of business at which company records are maintained or refining activities are conducted.

(c) The state board shall supply each complying motor vehicle fuel distributor with a certificate of compliance with this section not later than June 30. The certificate shall be effective from July 1 of the year of issuance through June 30 of the following year.

(d) All motor vehicle fuel distributors shall maintain complete records of each purchase, delivery, or supply of motor vehicle fuel for

a period of not less than two years in the physical locations reported pursuant to subdivision (b) and shall not move the records to another physical location without notifying the state board of the new location. A complete record for each delivery shall consist of not less than a copy, or the information contained therein, of the bills of lading from the refinery or bulk terminal from which the fuel is received, the delivery ticket or receipt showing the location of the fuel at the time of sale, and the invoice showing the purchaser of the fuel. All those records may be kept in physical or electronic format and are subject to inspection and duplication by the state board.

(e) Any motor vehicle fuel distributor who intentionally fails to comply with subdivision (b) or (d) is liable for a civil penalty not to exceed one thousand dollars ($1,000) for each day of noncompliance.

(f) No person shall knowingly transport motor vehicle fuel for any motor vehicle fuel distributor who is not in possession of a current certificate of compliance as described in subdivision (c). Any person who transports or provides vehicles to transport motor vehicle fuel for a noncomplying distributor is liable for a civil penalty not exceeding ten thousand dollars ($10,000) for each day. However, any person who transports, or provides vehicles to transport, motor vehicle fuel for a distributor who is in possession of a current certificate of compliance shall not be liable for any penalties under this subdivision unless that person has specific knowledge of noncompliance.

(g) Any retailer who knowingly sells or supplies motor vehicle fuel that was delivered to the retailer by, or on behalf of, a noncomplying motor vehicle fuel distributor is liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each transaction.

(h) Any retailer who sells motor vehicle fuel that does not comply with regulations of the state board, after both oral and written notice to cease have been delivered to the owner, manager, or attendant on duty at the facility, and upon failure to comply with that notice, is subject to the issuance of a cease and desist order by the state board and a penalty of ten thousand dollars ($10,000) for each day of noncompliance with the cease and desist order.

(i) The state board shall annually compile and publish a complete listing of all certified wholesale petroleum distributors, and shall mail a copy to every licensed transporter of petroleum products.

(j) This section shall become operative January 1, 2003.

SEC. 18. Section 43023 is added to the Health and Safety Code, to read:

43023. (a) As an alternative to seeking civil penalties under Chapter 1 (commencing with Section 43000) to Chapter 4 (commencing with Section 43800), inclusive, and Chapter 6 (commencing with Section 44200), for violation of state board regulations, the state board

may impose an administrative penalty, as specified in this section, for a violation of this part, or any rule, regulation, permit, variance, or order of the state board pertaining to vehicular air pollution control except as otherwise provided in this division. No administrative penalty imposed pursuant to this section shall exceed the amount that the state board is authorized to seek as a civil penalty for the applicable violation, and no administrative penalty imposed pursuant to this section shall exceed ten thousand dollars ($10,000) for each day in which there is a violation up to a maximum of one hundred thousand dollars ($100,000) per penalty assessment proceeding for any violation arising from the same conduct. This one hundred thousand dollar ($100,000) maximum penalty limitation does not apply in any judicial proceeding involving violations committed under this part.

(b) Nothing in this section restricts the authority of the state board to negotiate mutual settlements under any other penalty provision of law that exceeds ten thousand dollars ($10,000) for each day in which there is a violation up to a maximum of one hundred thousand dollars ($100,000) per penalty assessment proceeding.

(c) The administrative penalties authorized by this section shall be imposed and recovered by the state board in administrative hearings established pursuant to Article 3 (commencing with Section 60065.1) and Article 4 (commencing with Section 60075.1) of Subchapter 1.25 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations, except that the hearings shall be conducted by an administrative law judge appointed by the Office of Administrative Hearings.

(d) Nothing in this section authorizes the state board to impose penalties for categories of violations for which the state board may not seek penalties in a civil action.

(e) If the state board imposes any administrative penalties pursuant to this section, the state board may not bring any action pursuant to, or rely upon, Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code.

(f) In determining the amount of any administrative penalty imposed pursuant to this section, the state board shall take into consideration all relevant circumstances, including, but not limited to, those factors specified in subdivision (b) of Section 43031.

(g) After an order imposing an administrative penalty becomes final pursuant to the hearing procedures identified in subdivision (c), and no petition for a writ of mandate has been filed within the time allotted for seeking judicial review of the order, the state board may apply to the Superior Court for the County of Sacramento for a judgment in the amount of the administrative penalty. The application, which shall include a certified copy of the final order of the administrative hearing

officer, shall constitute a sufficient showing to warrant the issuance of the judgment.

(h) This section does not apply to any violation for which a penalty may be assessed pursuant to Chapter 1.5 (commencing with Section 43025).

(i) This section is not intended, and shall not be construed, to grant the state board authority to assess an administrative penalty for any category of violation that was not subject to enforcement by the state board as of January 1, 2002.

(j) Any administrative penalty assessed pursuant to this section shall be paid to the State Treasurer for deposit in the General Fund.

(k) A party adversely affected by the final decision in the administrative hearing may seek independent judicial review by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure.

(*l*) This section applies only to violations that occur on or after January 1, 2002.

(m) On or before January 1, 2005, the state board shall prepare and submit to the Legislature and the Governor a report summarizing the administrative penalties imposed by the state board pursuant to this section for calendar years 2002, 2003, 2004, and 2005.

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## CHAPTER 770

An act to amend Section 399.8 of the Public Utilities Code, relating to public utilities.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 399.8 of the Public Utilities Code, as added by Chapter 1050 of the Statutes of 2000, is amended to read:

399.8. (a) In order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is the policy of this state and the intent of the Legislature that prudent investments in energy efficiency, renewable energy, and research, development and demonstration shall continue to be made.

(b) (1) Every customer of an electrical corporation, shall pay a nonbypassable system benefits charge authorized pursuant to this

article. The system benefits charge shall fund energy efficiency, renewable energy, and research, development and demonstration.

(2) Local publicly owned electric utilities shall continue to collect and administer system benefits charges pursuant to Section 385.

(c) (1) The commission shall require each electrical corporation to identify a separate rate component to collect revenues to fund energy efficiency, renewable energy, and research, development and demonstration programs authorized pursuant to this section beginning January 1, 2002, through January 1, 2012. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.

(2) This rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. If the amounts specified in paragraph (1) of subdivision (d) are not recovered fully in any year, the commission shall reset the rate component to restore the unrecovered balance, provided that the rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. Pending restoration, any annual shortfalls shall be allocated pro rata among the three funding categories in the proportions established in paragraph (1) of subdivision (d).

(d) The commission shall order San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company to collect these funds commencing on January 1, 2002, as follows:

(1) Two hundred twenty-eight million dollars ($228,000,000) per year in total for energy efficiency and conservation activities, one hundred thirty-five million dollars ($135,000,000) in total per year for renewable energy, and sixty-two million five hundred thousand dollars ($62,500,000) in total per year for research, development and demonstration. The funds for energy efficiency and conservation activities shall continue to be allocated in proportions established for the year 2000 as set forth in paragraph (1) of subdivision (c) of Section 381.

(2) The amounts shall be adjusted annually at a rate equal to the lesser of the annual growth in electric commodity sales or inflation, as defined by the gross domestic product deflator.

(e) The commission and the Energy Commission shall retain and continue their oversight responsibilities as set forth in Sections 381, 383, 383.5, and 445, and Chapter 7.1 (commencing with Section 25620) of the Public Resources Code.

(f) (1) On or before January 1, 2004, the Governor shall appoint an independent review panel including, but not limited to, members with expertise on the energy service needs of large and small electricity

consumers, system reliability issues, and energy-related public policy. On or before January 1, 2005, the panel shall prepare and submit to the Legislature and the Energy Commission a report evaluating the energy efficiency, renewable energy, and research, development and demonstration programs funded under this section. Reasonable costs associated with the review in each of the three program categories, including technical assistance, may be charged to the relevant program category under procedures to be developed by the commission for energy efficiency and by the Energy Commission for renewable energy and research, development and demonstration.

(2) The report shall also assess all of the following:

(A) Whether ongoing programs are consistent with the statutory goals.

(B) Whether potential synergies among the program categories described in paragraph (1) that could provide enhanced public value have been identified and incorporated in the programs.

(C) If established targets for increased renewable generation are likely to be achieved.

(D) What changes should be made to result in a more efficient use of public resources.

(3) The report shall also compare the Energy Commission's programs with efforts undertaken by other states and assess, as an alternative, the relative costs and benefits of adopting a tradable minimum renewable energy requirement in California. The evaluation shall include recommendations intended to optimize renewable resource development at the least cost.

(4) For energy efficiency programs, the report shall include an evaluation of all of the following:

(A) The net benefits secured for residential customers, taking into account both public and private costs, including improvements in that customer group's ability to avoid or reduce consumption of relatively costly peak electricity.

(B) Whether the programs provide a balance of benefits to all sectors that contribute to the funding.

(C) The extent to which competition in energy markets including, but not limited to, load participation in ancillary services markets, and improvements in technology affect the continuing need for such programs.

(D) The status and growth of the private, competitive energy services industry that provides energy efficiency services and other energy products to customers.

(E) The commercial availability of any new technologies that reduce electricity demands during high-priced periods.

(F) Customers' willingness and ability to reduce consumption or adopt energy efficiency measures without program support.

(G) The extent to which the programs have delivered cost-effective energy efficiency not adequately provided by markets and as a result have reduced energy demand and consumption.

(H) The relative cost effectiveness of program expenditures compared to other current or potential expenditures to enhance system reliability.

(5) The report shall include specific recommendations aimed at assisting the Legislature in determining whether to change or eliminate the collection of the system benefits charge on or after January 1, 2007.

(6) The panel may update and revise the report as needed.

(g) Promptly after receiving the panel's report, the commission shall convene a proceeding to address implementation of the panel's energy efficiency recommendations.

(h) An applicant for the Large Nonresidential Standard Performance Contract Program funded pursuant to paragraph (1) of subdivision (b) and an electrical corporation shall promptly attempt to resolve disputes that arise related to the program's guidelines and parameters prior to entering into a program agreement. The applicant shall provide the electrical corporation with written notice of any dispute. Within 10 business days after the date of receipt of the notice, the parties shall meet to resolve the dispute. If the dispute is not resolved within 10 business days after the meeting, the electrical corporation shall notify the applicant of his or her right to file a complaint with the commission, which complaint shall describe the grounds for the complaint, injury, and relief sought. The commission shall issue its findings in response to a filed complaint within 30 business days of the date of receipt of the complaint. Prior to issuance of its findings, the commission shall provide a copy of the complaint to the electrical corporation, which shall provide a response to the complaint to the commission within five business days of the date of receipt. During the dispute period, the amount of estimated financial incentives shall be held in reserve until the dispute is resolved.

SEC. 2. Section 399.8 of the Public Utilities Code, as added by Chapter 1051 of the Statutes of 2000, is amended to read:

399.8. (a) In order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is the policy of this state and the intent of the Legislature that prudent investments in energy efficiency, renewable energy, and research, development and demonstration shall continue to be made.

(b) (1) Every customer of an electrical corporation, shall pay a nonbypassable system benefits charge authorized pursuant to this

article. The system benefits charge shall fund energy efficiency, renewable energy, and research, development and demonstration.

(2) Local publicly owned electric utilities shall continue to collect and administer system benefits charges pursuant to Section 385.

(c) (1) The commission shall require each electrical corporation to identify a separate rate component to collect revenues to fund energy efficiency, renewable energy, and research, development and demonstration programs authorized pursuant to this section beginning January 1, 2002, through January 1, 2012. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.

(2) This rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. If the amounts specified in paragraph (1) of subdivision (d) are not recovered fully in any year, the commission shall reset the rate component to restore the unrecovered balance, provided that the rate component may not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. Pending restoration, any annual shortfalls shall be allocated pro rata among the three funding categories in the proportions established in paragraph (1) of subdivision (d).

(d) The commission shall order San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company to collect these funds commencing on January 1, 2002, as follows:

(1) Two hundred twenty-eight million dollars ($228,000,000) per year in total for energy efficiency and conservation activities, one hundred thirty-five million dollars ($135,000,000) in total per year for renewable energy, and sixty-two million five hundred thousand dollars ($62,500,000) in total per year for research, development and demonstration. The funds for energy efficiency and conservation activities shall continue to be allocated in proportions established for the year 2000 as set forth in paragraph (1) of subdivision (c) of Section 381.

(2) The amounts shall be adjusted annually at a rate equal to the lesser of the annual growth in electric commodity sales or inflation, as defined by the gross domestic product deflator.

(e) The commission and the Energy Commission shall retain and continue their oversight responsibilities as set forth in Sections 381, 383, 383.5, and 445, and Chapter 7.1 (commencing with Section 25620) of Division 15 of the Public Resources Code.

(f) (1) On or before January 1, 2004, the Governor shall appoint an independent review panel including, but not limited to, members with expertise on the energy service needs of large and small electricity

consumers, system reliability issues, and energy-related public policy. On or before January 1, 2005, the panel shall prepare and submit to the Legislature and the Energy Commission a report evaluating the energy efficiency, renewable energy, and research, development and demonstration programs funded under this section. Reasonable costs associated with the review in each of the three program categories, including technical assistance, may be charged to the relevant program category under procedures to be developed by the commission for energy efficiency and by the Energy Commission for renewable energy and research development and demonstration.

(2) The report shall also assess all of the following:

(A) Whether ongoing programs are consistent with the statutory goals.

(B) Whether potential synergies among the program categories described in paragraph (1) that could provide enhanced public value have been identified and incorporated in the programs.

(C) If established targets for increased renewable generation are likely to be achieved.

(D) What changes should be made to result in a more efficient use of public resources.

(3) The report shall also compare the Energy Commission's programs with efforts undertaken by other states and assess, as an alternative, the relative costs and benefits of adopting a tradable minimum renewable energy requirement in California. The evaluation shall include recommendations intended to optimize renewable resource development at the least cost.

(4) For energy efficiency programs, the report shall include an evaluation of all of the following:

(A) The net benefits secured for residential customers, taking into account both public and private costs, including improvements in that customer group's ability to avoid or reduce consumption of relatively costly peak electricity.

(B) Whether the programs provide a balance of benefits to all sectors that contribute to the funding.

(C) The extent to which competition in energy markets including, but not limited to, load participation in ancillary services markets, and improvements in technology affect the continuing need for such programs.

(D) The status and growth of the private, competitive energy services industry that provides energy efficiency services and other energy products to customers.

(E) The commercial availability of any new technologies that reduce electricity demands during high-priced periods.

(F) Customers' willingness and ability to reduce consumption or adopt energy efficiency measures without program support.

(G) The extent to which the programs have delivered cost-effective energy efficiency not adequately provided by markets and as a result have reduced energy demand and consumption.

(H) The relative cost effectiveness of program expenditures compared to other current or potential expenditures to enhance system reliability.

(5) The report shall include specific recommendations aimed at assisting the Legislature in determining whether to change or eliminate the collection of the system benefits charge on or after January 1, 2007.

(6) The panel may update and revise the report as needed.

(g) Promptly after receiving the panel's report, the commission shall convene a proceeding to address implementation of the panel's energy efficiency recommendations.

(h) An applicant for the Large Nonresidential Standard Performance Contract Program funded pursuant to paragraph (1) of subdivision (b) and an electrical corporation shall promptly attempt to resolve disputes that arise related to the program's guidelines and parameters prior to entering into a program agreement. The applicant shall provide the electrical corporation with written notice of any dispute. Within 10 business days after receipt of the notice, the parties shall meet to resolve the dispute. If the dispute is not resolved within 10 business days after the date of the meeting, the electrical corporation shall notify the applicant of his or her right to file a complaint with the commission, which complaint shall describe the grounds for the complaint, injury, and relief sought. The commission shall issue its findings in response to a filed complaint within 30 business days of the date of receipt of the complaint. Prior to issuance of its findings, the commission shall provide a copy of the complaint to the electrical corporation, which shall provide a response to the complaint to the commission within five business days of the date of receipt. During the dispute period, the amount of estimated financial incentives shall be held in reserve until the dispute is resolved.

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.

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CHAPTER 771

An act to add Section 785.2 to the Public Utilities Code, relating to public utilities.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 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 is one of the largest producers of oil and natural gas in the nation.

(b) California is one of the largest consumers of oil and natural gas in the nation.

(c) Natural gas is a crucial commodity that is necessary for electricity production, residential heating, commodity production, and industrial manufacturing.

(d) The price of electricity is tied closely to the price of natural gas.

(e) Despite having significant untapped reserves of natural gas, California remains heavily dependent upon out-of-state gas deliveries.

(f) It is in the state's long-term economic interest to promote policies that maximize the use of available in-state resources and encourage the increased production of natural gas.

(g) It is also in the state's long-term economic interest to maximize the development of renewable energy sources, decrease its overall dependence on natural gas, and create a more diverse mix of energy supplies and energy efficiency measures.

(h) To the extent practicable, and consistent with Sections 785 and 785.5 of the Public Utilities Code, the Public Utilities Commission should not adopt a tariff that has the effect of discouraging in-state production or storage of natural gas.

SEC. 2. Section 785.2 is added to the Public Utilities Code, to read:

785.2. The commission shall investigate, as part of the rate proceeding for any gas corporation, impediments to the in-state production and storage of natural gas. The commission may adopt a tariff that encourages in-state production or storage of natural gas, including, but not limited to, reducing local transmission rates applicable to in-state gas blends, unless the commission finds that adopting the tariff will likely result in consequences adverse to the interests of gas customers.

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.

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## CHAPTER 772

An act to amend Section 62.1 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. In 1988, the Legislature changed, for purposes of property taxation, the method for determining changes in ownership of resident-owned mobilehome parks, but failed to specify a notice process for those changes in ownership. The Legislature finds and declares, as a result, that there exists a situation in which the failure to timely assess changes in ownership in resident-owned mobilehome parks has or will result in the issuance of escape and supplemental assessments in an unfair and inequitable manner. Residents of those parks have been or will be faced with unforeseen tax bills in significant amounts that have imposed or will impose an unfair and unreasonable burden on the residents of the parks, many of whom are persons of limited means or fixed incomes. The Legislature further finds and declares that it is in the public interest to avoid the unfair and unreasonable burden on the park residents that results from escape and supplement assessments in this situation. It is the intent of the Legislature, in adding paragraph (4) to subdivision (b) of Section 62.1 of the Revenue and Taxation Code to avoid the unfair and unreasonable burden on the park residents of escape and supplemental assessments, and to permit the changes in ownership to be applied prospectively only, commencing with the lien date in 2002. It is the intent of the Legislature, in adding paragraphs (5), (6), and (7) to subdivision (b) of Section 62.1 of the Revenue and Taxation Code, to ensure adequate notice of ownership changes and prevent future unanticipated assessments.

SEC. 2. Section 62.1 of the Revenue and Taxation Code is amended to read:

62.1. (a) Change in ownership shall not include the following:

(1) Any transfer, on or after January 1, 1985, of a mobilehome park to a nonprofit corporation, stock cooperative corporation, limited equity stock cooperative, or other entity formed by the tenants of a mobilehome

park, for the purpose of purchasing the mobilehome park, provided that, with respect to any transfer of a mobilehome park on or after January 1, 1989, subject to this paragraph, the individual tenants who were renting at least 51 percent of the spaces in the mobilehome park prior to the transfer participate in the transaction through the ownership of an aggregate of at least 51 percent of the voting stock of, or other ownership or membership interests in, the entity which acquires the park. If, on or after January 1, 1998, a park is acquired by an entity that did not attain an initial tenant participation level of at least 51 percent on the date of the transfer, the entity shall have up to one year after the date of the transfer to attain a tenant participation level of at least 51 percent. If an individual tenant notifies the county assessor of the intention to comply with the conditions set forth in the preceding sentence, the mobilehome park may not be reappraised by the assessor during that period. However, if a tenant participation level of at least 51 percent is not attained within the one-year period, the county assessor shall thereafter levy escape assessments for the mobilehome park transfer.

(2) Any transfer or transfers on or after January 1, 1985, of rental spaces in a mobilehome park to the individual tenants of the rental spaces, provided that (1) at least 51 percent of the rental spaces are purchased by individual tenants renting their spaces prior to purchase, and (2) the individual tenants of these spaces form, within one year after the first purchase of a rental space by an individual tenant, a resident organization as described in subdivision (*l*) of Section 50781 of the Health and Safety Code, to operate and maintain the park. If, on or after January 1, 1985, an individual tenant or tenants notify the county assessor of the intention to comply with the conditions set forth in the preceding sentence, any mobilehome park rental space that is purchased by an individual tenant in that mobilehome park during that period shall not be reappraised by the assessor. However, if all of the conditions set forth in the first sentence of this paragraph are not satisfied, the county assessor shall thereafter levy escape assessments for the spaces so transferred. This paragraph shall apply only to those rental mobilehome parks that have been in operation for five years or more.

(b) (1) If the transfer of a mobilehome park has been excluded from a change in ownership pursuant to paragraph (1) of subdivision (a) and the park has not been converted to condominium, stock cooperative ownership, or limited equity cooperative ownership, any transfer on or after January 1, 1989, of shares of the voting stock of, or other ownership or membership interests in, the entity that acquired the park in accordance with paragraph (1) of subdivision (a) shall be a change in ownership of a pro rata portion of the real property of the park unless the transfer is for the purpose of converting the park to condominium, stock

cooperative ownership, or limited equity cooperative ownership or is excluded from change in ownership by Section 62, 63, or 63.1.

(2) For the purposes of this subdivision, ''pro rata portion of the real property'' means the total real property of the mobilehome park multiplied by a fraction consisting of the number of shares of voting stock, or other ownership or membership interests, transferred divided by the total number of outstanding issued or unissued shares of voting stock of, or other ownership or membership interests in, the entity that acquired the park in accordance with paragraph (1) of subdivision (a).

(3) Any pro rata portion or portions of real property that changed ownership pursuant to this subdivision may be separately assessed as provided in Section 2188.10.

(4) (A) Notwithstanding any other provision of law, after an exclusion under subdivision (a), the assessor may not levy any escape or supplemental assessment with respect to any change in ownership of a pro rata portion of the real property of the mobilehome park that occurred between January 1, 1989, and January 1, 2002, and for which the assessor did not, prior to January 1, 2000, levy any assessments. However, commencing with the January 1, 2002, lien date, the assessor shall correct the base year value of the pro rata portion of the real property of the park to properly reflect these changes in ownership. A mobilehome park shall provide information requested by the assessor that is necessary to correct the base year value of the property for purposes of this paragraph.

(B) When an assessor corrects the base year value of the real property of the park pursuant to subparagraph (A), the assessor shall notify parks that residents may be eligible for property tax assistance programs offered by either the Controller or the Franchise Tax Board for senior citizens, or blind or disabled persons.

(C) Any outstanding taxes that were levied between January 1, 2000, and January 1, 2002, as a result of a pro rata change in ownership as described in subparagaph (A) shall be canceled. However, there shall be no refund of taxes, as so levied, that were paid prior to January 1, 2002.

(5) A mobilehome park that does not utilize recorded deeds to transfer ownership interest in the spaces or lots shall file, by February 1 of each year, a report with the county assessor's office containing all of the following information:

(A) The full name and mailing address of each owner, stockholder, or holder of an ownership interest in the mobilehome park.

(B) The situs address, including space number, of each unit.

(C) The date that the ownership interest was acquired.

(D) If the unit is a manufactured home, the Department of Housing and Community Development decal number or serial number, or both,

and whether the manufactured home is subject to the vehicle license fee or the local property tax.

(6) Within 30 days of a change in ownership, the new resident owner or other purchaser or transferee of a mobilehome within a mobilehome park that does not utilize recorded deeds to transfer ownership interest in the spaces or lots shall file a change in ownership statement described in either Section 480 or 480.2.

(7) Failure to comply with the reporting requirement described in paragraph (5) shall result in a penalty pursuant to Section 482.

(c) It is the intent of the Legislature that, in order to facilitate affordable conversions of mobilehome parks to tenant ownership, paragraph (1) of subdivision (a) apply to all bona fide transfers of rental mobilehome parks to tenant ownership, including, but not limited to, those parks converted to tenant ownership as a nonprofit corporation made on or after January 1, 1985.

SEC. 3. 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. 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.

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## CHAPTER 773

An act to amend Section 7195 of the Business and Professions Code, and to add Sections 25401.5 and 25401.7 to the Public Resources Code, relating to energy resources.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. The Legislature finds and declares that energy costs represent a significant proportion of consumers' discretionary expenses and that energy efficiency measures are available for residential dwellings in existence on the effective date of this act.

SEC. 2. Section 7195 of the Business and Professions Code is amended to read:

7195. For purposes of this chapter, the following definitions apply:

(a) (1) ''Home inspection'' is a noninvasive, physical examination, performed for a fee in connection with a transfer, as defined in subdivision (e), of real property, of the mechanical, electrical, or plumbing systems or the structural and essential components of a residential dwelling of one to four units designed to identify material defects in those systems, structures and components. ''Home inspection'' includes any consultation regarding the property that is represented to be a home inspection or any confusingly similar term.

(2) ''Home inspection,'' if requested by the client, may include an inspection of energy efficiency . Energy efficiency items to be inspected may include the following:

(A) A noninvasive inspection of insulation R-values in attics, roofs, walls, floors, and ducts.

(B) The number of window glass panes and frame types.

(C) The heating and cooling equipment and water heating systems.

(D) The age and fuel type of major appliances.

(E) The exhaust and cooling fans.

(F) The type of thermostat and other systems.

(G) The general integrity and potential leakage areas of walls, window areas, doors, and duct systems.

(H) The solar control efficiency of existing windows.

(b) A ''material defect'' is a condition that significantly affects the value, desirability, habitability, or safety of the dwelling. Style or aesthetics shall not be considered in determining whether a system, structure, or component is defective.

(c) A ''home inspection report'' is a written report prepared for a fee and issued after a home inspection. The report clearly describes and identifies the inspected systems, structures, or components of the dwelling, any material defects identified, and any recommendations regarding the conditions observed or recommendations for evaluation by appropriate persons.

(d) A ''home inspector'' is any individual who performs a home inspection.

(e) ''Transfer'' is a transfer by sale, exchange, installment land sales contract, as defined in Section 2985 of the Civil Code, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, of real property or residential stock cooperative, improved with or consisting of not less than one nor more than four dwelling units.

SEC. 3. Section 25401.5 is added to the Public Resources Code, to read:

25401.5. For the purpose of reducing electrical and natural gas energy consumption, the commission may develop and disseminate measures that would enhance energy efficiency for single-family residential dwellings that were built prior to the development of the current energy efficiency standards. The measures, if developed and disseminated, shall provide a homeowner with information to improve the energy efficiency of a single-family residential dwelling. The commission may comply with this section by posting the measures on the commission's Internet Web site or by making the measures available to the public, upon request.

SEC. 4. Section 25401.7 is added to the Public Resources Code, to read:

25401.7. At the time a single-family residential dwelling is sold, a buyer or seller may request a home inspection, as defined in subdivision (a) of Section 7195 of the Business and Professions Code, and a home inspector, as defined in subdivision (d) of Section 7195 of the Business and Professions Code, shall provide, contact information for one or more of the following entities that provide home energy information:

(a) A nonprofit organization.

(b) A provider to the residential dwelling of electrical service, or gas service, or both.

(c) A government agency, including, but not limited to, the commission.

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## CHAPTER 774

An act to amend Section 399.6 of the Public Utilities Code, relating to public utilities.

[Approved by Governor October 11, 2001. Filed with Secretary of State October 12, 2001.]

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

SECTION 1. Section 399.6 of the Public Utilities Code is amended to read:

399.6. (a) In order to optimize public investment and ensure that the most cost-effective and efficient investments in renewable resources are vigorously pursued, the Energy Commission shall create an investment plan as set forth in paragraphs (1) to (3), inclusive, to govern the allocation of funds provided pursuant to this article. The Energy Commission's long-term goal shall be a fully competitive and

self-sustaining California renewable energy supply. The investment plan shall be in accordance with all of the following:

(1) The investment plan's objective shall be 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.

(2) An additional objective of the plan shall be to identify and support emerging renewable energy technologies that have the greatest near-term commercial promise and that merit targeted assistance.

(3) The investment plan shall contain specific numerical targets, reflecting the projected impact of the plan, for both of the following:

(A) Increased quantity of California electrical generation produced from emerging technologies and from overall renewable resources.

(B) Increased supply of renewable generation available from facilities other than those selling to investor-owned utilities under contracts entered into prior to 1996 under the federal Public Utilities Regulatory Policies Act of 1978 (P.L. 95-617).

(b) The Energy Commission shall, on an annual basis, evaluate progress on meeting the targets set forth in subparagraphs (A) and (B) of paragraph (3) of subdivision (a), or any substitute provisions adopted by the Legislature upon review of the investment plan, and assess the impact of the investment plan on reducing the cost to Californians of renewable energy generation.

(c) In preparing these investment plans, the Energy Commission shall recommend allocations among all of the following:

(1) (A) Except as provided in subparagraph (B), production incentives for new renewable energy, including repowered or refurbished renewable energy.

(B) Allocations may not be made for renewable energy that is generated by a project that remains under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.

(C) Notwithstanding subparagraph (B), production incentives for incremental new, repowered, or refurbished renewable energy from existing projects under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter, may be allowed in any month, if all of the following occur:

(i) The project's power purchase contract provides that all energy delivered and sold under the contract is paid at a price that does not exceed commission approved short-run avoided cost of energy.

(ii) Either of the following:

(I) The power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive.

(II) If a project's installed capacity as of December 31, 1998, is less than 75 percent of the nameplate capacity as stated in the power purchase contract, the power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the product of the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive, and the ratio of installed capacity as of December 31 of the previous year, but not to exceed contract nameplate capacity, to the installed capacity as of December 31, 1998.

(iii) The production incentive is payable only with respect to the kilowatthours delivered in a particular month that exceeds the corresponding five-year average calculated pursuant to clause (ii).

(2) Rebates, buydowns, or equivalent incentives for emerging renewable technologies.

(3) Customer credits for renewables not under contract with a utility.

(4) Customer education.

(5) Incentives for reducing fuel costs that are confirmed to the satisfaction of the Energy Commission at solid fuel biomass energy facilities in order to provide demonstrable environmental and public benefits, including, but not limited to, air quality.

(6) Solar thermal generating resources that enhance the environmental value or reliability of the electrical system and that require financial assistance to remain economically viable, as determined by the Energy Commission. The Energy Commission may require financial disclosure from applicants for purposes of this paragraph.

(7) Specified fuel cell technologies, if the Energy Commission makes all of the following findings:

(A) The specified technologies have similar or better air pollutant characteristics than renewable technologies in the investment plan.

(B) The specified technologies require financial assistance to become commercially viable by reference to wholesale generation prices.

(C) The specified technologies could contribute significantly to the infrastructure development or other innovation required to meet the long-term objective of a self-sustaining, competitive supply of renewable energy.

(8) Existing wind-generating resources, if the Energy Commission finds that the existing wind-generating resources are a cost-effective source of reliable and environmental benefits compared with other eligible sources, and that the existing wind-generating resources require financial assistance to remain economically viable, as determined by the Energy Commission. The Energy Commission may require financial disclosure from applicants for the purposes of this paragraph.

(d) The commission shall establish a cap on the aggregate amount of funds which may be awarded to public entities from the program which provides customer credits for renewables. The intent of the cap is to assure adequate funding of credits for residential and small commercial customers.

(e) Notwithstanding any other provision of law, moneys collected for renewable energy pursuant to this article shall be transferred to the Renewable Resource Trust Fund of the Energy Commission, to be held until further action by the Legislature. The Energy Commission shall prepare and submit to the Legislature, on or before March 31, 2001, an initial investment plan for these moneys, addressing the application of moneys collected between January 1, 2002, and January 1, 2007. The initial investment plan shall also include an evaluation of and report to the Legislature regarding the appropriateness and structure of a mandatory state purchase of renewable energy. On or before March 31, 2006, the Energy Commission shall prepare an investment plan proposing the application of moneys collected between January 1, 2007, and January 1, 2012. No moneys may be expended in the years covered by these plans without further legislative action.

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## CHAPTER 775

An act to amend Section 22828 of, and to add Section 22821.2 to, the Government Code, relating to public employee health benefits, and making an appropriation therefor.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 22821.2 is added to the Government Code, to read:

22821.2. (a) Upon the death, on or after January 1, 2002, of (1) a firefighter employed by a county, city, city and county, district, or other political subdivision of the state, (2) a firefighter employed by the

Department of Forestry and Fire Protection, or (3) a peace officer as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.38, 830.39, 830.4, 830.5, 830.55, or 830.6 of the Penal Code, if the death occurred as a result of injury or disease arising out of and in the course of his or her official duties, the surviving spouse and other eligible family members of the deceased firefighter or peace officer, if uninsured, shall be deemed to be annuitants under subdivision (e) of Section 22754 for purposes of enrollment pursuant to Section 22810. All eligible family members of the deceased firefighter or peace officer who are uninsured may enroll in an approved health benefits plan of the surviving spouse's choice; however, an unmarried child of the surviving spouse shall not be eligible to enroll in a health benefits plan under this section if the child was not a family member under subdivision (f) of Section 22754 and regulations pertinent thereto on the firefighter's or peace officer's date of death. The employer of the deceased firefighter or peace officer shall notify the board within 10 days of the death of the employee whose spouse or family member may be eligible for enrollment in a health benefits plan under this section. Upon notification, the board shall promptly determine eligibility, and shall forward to the eligible spouse or family member the materials necessary for enrollment.

(b) (1) Notwithstanding any other provision of law, but except as otherwise provided in subdivision (c), the state shall pay a contribution equal to 100 percent of the amount established in paragraph (2) for health benefits coverage under this part for (A) the uninsured surviving spouse of a deceased firefighter or peace officer for life, and (B) the other uninsured eligible family members of a deceased firefighter or peace officer so long as the family member meets the eligibility requirements of subdivision (f) of Section 22754 and regulations pertinent thereto.

(2) The contribution payable by the state for each uninsured surviving spouse and other uninsured eligible family members shall be calculated and adjusted annually pursuant to this paragraph. Annual adjustments of the dollar amounts shall be based upon the principle that the state's contribution for each uninsured surviving spouse shall be an amount equal to 100 percent of the weighted average of the health benefits plan premiums for employees or annuitants enrolled for self alone plus 90 percent of the weighted average of the additional premiums required for enrollment of family members in the four health benefits plans that have the largest number of basic enrollments during the fiscal year to which the formula applied.

(3) The state's contribution under this section shall commence on the effective date of enrollment of the uninsured surviving spouse or other uninsured eligible family members. The contribution of each surviving spouse and eligible family member shall be the total cost per month of

the benefit coverage afforded him or her under the plan or plans less the portion contributed by the state pursuant to this section.

(c) The cancellation of coverage by an annuitant, as defined in this section, shall be final without option to reenroll, unless coverage is canceled because of enrollment in an insurance plan from another source.

(d) In the event of a dispute regarding whether a firefighter's or peace officer's death occurred as a result of injury or disease arising out of and in the course of his or her official duties as required under subdivision (a), that dispute shall be determined by the Workers' Compensation Appeals Board, subject to the same procedures and standards applicable to hearings relating to claims for workers' compensation benefits. The jurisdiction of the Workers' Compensation Appeals Board under this section shall be limited to the sole issue of industrial causation and this section shall not be construed to authorize the Workers' Compensation Appeals Board to award costs against the system.

(e) For purposes of this section, ''surviving spouse'' means a husband or wife who was married to the deceased firefighter or peace officer on the deceased's date of death and for a continuous period of at least one year prior to the date of death.

(f) For purposes of this section, ''uninsured'' means that the surviving spouse is not enrolled in an employer-sponsored health plan under which the employer contribution covers 100 percent of the cost of health care premiums.

(g) The board shall have no duty to identify, locate, or notify any surviving spouse or eligible family member who may be or may become eligible for benefits under this part due to the enactment of this section.

SEC. 2. Section 22828 of the Government Code is amended to read:

22828. From the General Fund in the State Treasury, there is appropriated monthly the state's contributions under Sections 22821.2, 22825, 22825.1, and 22826 for:

(a) All employees whose compensation is paid from the General Fund.

(b) All employees whose compensation is paid from funds of, or funds appropriated to, the university.

(c) All employees who are employed by the Department of Education or the Department of Rehabilitation and whose compensation is paid from the Vocational Education Federal Fund, the Vocational Rehabilitation Federal Fund, or any other fund received, in whole or in part, as a donation to the state under restrictions preventing its use for those contributions.

(d) All employees whose compensation is paid from the Senate Contingent Fund or Assembly Contingent Fund or the Contingent Funds of the Assembly and Senate.

(e) All annuitants.

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## CHAPTER 776

An act to amend Sections 18800, 18824, and 18882 of the Business and Professions Code, and to amend Section 11012 of the Government Code, relating to athletic events.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 18800 of the Business and Professions Code is amended to read:

18800. As of July 1, 1994, all moneys received by the commission under the provisions of this chapter shall be accounted for and reported by detailed statements furnished by the commission to the Controller at least once a month. At the same time, these moneys, other than those that have been received by the commission pursuant to Section 18882, shall be remitted to the Treasurer and shall be deposited in the General Fund.

SEC. 2. Section 18824 of the Business and Professions Code, as amended by Section 1 of Chapter 436 of the Statutes of 2000, is amended to read:

18824. (a) Except as provided in Sections 18646 and 18832, every person who conducts a contest or wrestling exhibition shall, within 72 hours after the determination of every contest or wrestling exhibition for which admission is charged and received, furnish to the commission a written report executed under penalty of perjury by one of the officers, showing the number of tickets issued or sold for the contest or wrestling exhibition, the amount of the gross receipts or value thereof, and the gross price charged directly or indirectly and no matter by whom received, for the sale, lease, or other exploitation of broadcasting and television rights of the contest or wrestling exhibition, and without any deductions, except for expenses incurred for one broadcast announcer, telephone line connection, and transmission mobile equipment facility, which may be deducted from the gross taxable base when those expenses are approved by the commission. The person shall also, within the same time, pay to the commission a fee of 5 percent, exclusive of any federal taxes paid thereon, of the amount paid for admission to the contest or wrestling exhibition, except that for any one boxing contest, the fee shall not exceed the amount of one hundred thousand dollars ($100,000), and a fee of up to 5 percent of the gross price as described above for the sale,

lease, or other exploitation of broadcasting or television rights thereof, except that in no case shall the fee be less than one thousand dollars ($1,000). The minimum fee for an amateur contest or exhibition shall not be less than five hundred dollars ($500). The amount of the gross receipts upon which the fee provided for in this section is calculated shall not include any assessments levied by the commission under Section 18711.

The fee on admission shall apply to the amount actually paid for admission and not to the regular established price.

No fee is due in the case of a person admitted free of charge. However, if the total number of persons admitted free of charge to a boxing, kickboxing, or martial arts contest or wrestling exhibition exceeds 25 percent of the total number of spectators, then a fee of one dollar ($1) per complimentary ticket or pass used to gain admission to the contest shall be paid to the commission for each complimentary ticket or pass that exceeds the numerical total of 25 percent of the total number of spectators.

(b) If the fee on admissions for any one boxing contest exceeds seventy thousand dollars ($70,000), the amount in excess of seventy thousand dollars ($70,000) shall be paid one-half to the commission and one-half to the Boxers' Pension Fund.

(c) As used in this section, ''person'' includes a promoter, club, individual, corporation, partnership, association or other organization, and ''wrestling exhibition'' means a performance of wrestling skills and techniques by two or more individuals, to which admission is charged or which is broadcast or televised, in which the participating individuals are not required to use their best efforts in order to win, and for which the winner may have been selected before the performance commences.

(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. 3. Section 18882 of the Business and Professions Code is amended to read:

18882. (a) At the time of payment of the fee required by Section 18824, a promoter shall pay to the commission all amounts scheduled for contribution to the pension plan. If the commission, in its discretion, requires pursuant to Section 18881, that contributions to the pension plan be made by the boxer and his or her manager, those contributions shall be made at the time and in the manner prescribed by the commission.

(b) All contributions to finance the pension plan shall be deposited in the State Treasury and credited to the Boxers' Pension Fund, which is hereby created. Notwithstanding the provisions of Section 13340 of the Government Code, all moneys in the Boxers' Pension Fund are hereby

continuously appropriated to be used exclusively for the purposes and administration of the pension plan.

(c) The Boxers' Pension Fund is a retirement fund, and no moneys within it shall be deposited or transferred to the General Fund.

(d) The commission has exclusive control of all funds in the Boxers' Pension Fund. No transfer or disbursement in any amount from this fund shall be made except upon the authorization of the commission and for the purpose and administration of the pension plan.

(e) Except as otherwise provided in this subdivision, the commission or its designee shall invest the money contained in the Boxers' Pension Fund according to the same standard of care as provided in Section 16040 of the Probate Code. The commission has exclusive control over the investment of all moneys in the Boxers' Pension Fund. Except as otherwise prohibited or restricted by law, the commission may invest the moneys in the fund through the purchase, holding, or sale of any investment, financial instrument, or financial transaction that the commission in its informed opinion determines is prudent.

SEC. 4. Section 11012 of the Government Code is amended to read:

11012. Whenever any state agency, including, but not limited to, state agencies acting in a fiduciary capacity, is authorized to invest funds, or to sell or exchange securities, prior approval of the Department of Finance to the investment, sale, or exchange shall be secured.

Every state agency shall furnish the Department of Finance with the reports and in the form, relating to the funds or securities, their acquisition, sale, or exchange, as may be requested by the Department of Finance from time to time.

This section does not apply to the following state agencies:

(a) Any state agency if issuing or dealing in securities authorized to be issued by it.

(b) The State Treasurer.

(c) The Regents of the University of California.

(d) Employment Development Department.

(e) Department of Veterans Affairs.

(f) Hastings College of Law.

(g) Board of Administration of the Public Employees' Retirement System.

(h) State Compensation Insurance Fund.

(i) California Transportation Commission and Department of Transportation if acting in accordance with bond resolutions adopted under the California Toll Bridge Authority Act (Chapter 1 (commencing with Section 30000) of Division 17 of the Streets and Highways Code) prior to September 15, 1945.

(j) Teachers' Retirement Board of the State Teachers' Retirement System.

(k) State Athletic Commission if acting pursuant to Section 18882 of the Business and Professions Code with respect to the Boxers' Pension Fund.

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## CHAPTER 777

An act to amend Section 5164 of the Public Resources Code, relating to parks and recreation.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 5164 of the Public Resources Code is amended to read:

5164. (a) A county or city or city and county or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor, if that person has been convicted of any offense specified in paragraph (1) of subdivision (h) of Section 11105.3 of the Penal Code, or any offense specified in paragraph (3) of subdivision (h) of Section 11105.3 of the Penal Code. However, this section shall not apply to a misdemeanor conviction under paragraph (3) of subdivision (h) of Section 11105.3 of the Penal Code unless that person has a total of three or more misdemeanor or felony convictions specified in Section 11105.3 of the Penal Code within the immediately preceding 10-year period.

(b) (1) To give effect to this section, a county or city or city and county or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a). The county or city or city and county or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over any minor, for that person's criminal background.

(2) Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. No fee shall

be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.

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.

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## CHAPTER 778

An act to amend Section 31494 of, and to add Sections 31461.45, 31462.3, 31491.3, 31492.1, 31492.2, 31494.2, 31494.5, 31495.5, 31760.12, 31760.13, 31765.2, 31765.3, 31781.12, 31781.13, 31785.4, and 31785.5 to, the Government Code, relating to county employees' retirement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 31461.45 is added to the Government Code, to read:

31461.45. (a) This section applies only to a county of the first class, as defined by Section 28020.

(b) ''Compensation earnable'' in a county of the first class shall include only those items of remuneration specifically included as a result of the court-approved settlement in (1) the consolidated cases of Los Angeles County Professional Peace Officers' Association, et al. v. Board of Retirement, Los Angeles County Employees' Retirement Association, (Los Angeles County Superior Court Case No. BS 051355) and Milton Cohen v. Board of Retirement, Los Angeles County Employees' Retirement Association, (Los Angeles County Superior Court Case No. BS 051774), (2) the case of Los Angeles County Fire Department Association of Chiefs, et al. v. Board of Retirement, Los Angeles County Employees' Retirement Association; County of Los Angeles, (Los Angeles County Superior Court Case No. BS 057432), and (3) the case of Cecil Bugh v. Board of Retirement, Los Angeles County Employees' Retirement System, (Los Angeles County Superior Court Case No. BS 055611), all of which were included in Coordination

Proceeding Special Title (Rule 1550(b)), Retirement Cases, Judicial Council Coordination Proceeding No. 4049, even if a final judicial determination in that coordinated case, or any subsequent case, should conclude that any additional item of remuneration must be included in that definition with respect to any other county. Those items of remuneration in addition to base salary and the pensionable portion, if any, of cafeteria plan contributions, are set forth in Resolution No 01-001, adopted by the Board of Retirement on or before the effective date of this section and shall include only the following:

| Earnings Code No. | Title |
|---|---|
| 099 | Patrol Station Retention Bonus |
| 358 | Temporary Promotion Bonus |
| 359 | Lifeguard Paramedic, Catalina |
| 503 | Uniform Allowance |
| 504 | Night Shift Differential |
| 505 | Coroner's Inquest Reporter |
| 507 | Co–Generation or Hydro–Electric Ops and Mtce |
| 508 | Henninger Flats Watchman |
| 509 | Freezer Work |
| 510 | Department Head Merit |
| 511 | Board of Supervisors Performance Lump Sum |
| 512 | Fire Suppression Transportation Truck Driver |
| 514 | Backhoe Operator |
| 516 | Explosives Work |
| 517 | Evening Shift Differential |
| 518 | Power Equipment Repair, Snow Conditions |
| 519 | Engineering Employees, Hazard Pay |
| 520 | Home Care Compensation |
| 522 | Custodian Acting As Watchman |
| 523 | DPD Deputy Director Recruitment Incentive |
| 525 | Contracting and Productivity Improvement Incentive for Managers |
| 528 | WEBCOM Press Operator |
| 529 | Power Equipment Operator, Fire Suppression |
| 530 | RN Extra Weekends Worked |
| 531 | Standby |
| 532 | Additional Responsibilities or Exceptional Performance |
| 533 | Power Sweeper Operator in Emergency Conditions |
| 534 | Power Plant Relief Engineer |

| | |
|---|---|
| 535 | Clinic Physician, First Hour and One–Half |
| 536 | Consulting Specialist, MD, & Mental Health Consultant, MD, First And Fifth Hours |
| 538 | RN Assigned as Acting or Relief Charge Nurse |
| 539 | RN Weekend Differential |
| 540 | Relief Nurse Holiday Differential (Hourly Item) |
| 541 | Relief Nurse Weekend Differential (Hourly Item) |
| 544 | Appraisers Laundry and Dry Cleaning Allowance |
| 545 | Heavy Duty Tow Truck Driver |
| 546 | Slurry Seal Truck Driver |
| 547 | Lifeguard Paramedic – Shift |
| 548 | Lifeguard Paramedic – Hourly |
| 550 | Incentive Awards For Medi–Cal Reimbursements, Health Services |
| 551 | Group Incentive Award, Treasurer Tax Collector |
| 553 | Pioneer Excavation, Tunnel Operations, Fire Suppression and Snow Removal – Construction Inspection and Surveying Groups |
| 554 | Pioneer Excavation, Tunnel Operations, Fire Suppression and Snow Removal |
| 555 | Scaffold or Swing Stage, 30 Feet Above Grade |
| 556 | High Scale and Rigging Operations, General |
| 557 | Evening Shift, Med Tech |
| 558 | Night Shift, Med Tech |
| 565 | Paramedic Recertification Bonus |
| 567 | Deputy Sheriff Reserve Annual Compensation |
| 570 | Home Care Program Standby |
| 571 | CSW Licensure Supervision |
| 572 | MOU Lump Sum Bonus |
| 601 | Lifeguard Paramedic, Relief |
| 602 | Supervising Transportation Deputy Performing Dispatcher Duties |
| 603 | Automotive Service Excellence Certificates |
| 604 | RN Mobile Intensive Care Certification |
| 605 | Custodian Floor Waxing Bonus |
| 606 | Fire Equipment Mechanic Assigned Field Repair Duties |
| 607 | SDPO Assigned Acting Director In A Camp |
| 608 | Bilingual Bonus |
| 609 | RN Assigned to Emergency Room |
| 610 | Antelope Valley Firefighting Crew |

| | |
|---|---|
| 611 | Tree Trimmer Supervisor, Power Operations |
| 612 | Shooting Bonus, Expert |
| 613 | Shooting Bonus, Distinguished Expert |
| 614 | Shooting Bonus, Marksman |
| 615 | Shooting Bonus, Sharpshooter |
| 616 | Antelope Valley Quarters, On Fire Call |
| 617 | Clinic Nurse Assigned to Probation Camp |
| 618 | Transportation Bus Driver, Sheriff |
| 619 | Lifeguard Paramedic |
| 620 | San Gabriel Dam Operator |
| 621 | Nurse Retention Incentive |
| 622 | Advanced Appraiser Certification |
| 623 | Probation Transcriber Typist Production Incentive |
| 624 | Bilingual Additional Bonus Children's Social Workers |
| 625 | Agriculture Inspectors Assigned to Standardization |
| 626 | Firefighter Paramedic not Assigned to a Paramedic Post |
| 628 | Bilingual Bonus for Other Than Monthly Employees |
| 629 | Mortuary Attendant at LAC/USC MC |
| 630 | Safety Police Educational/Longevity Incentive |
| 632 | Mental Health Workers Assigned to Sheriff's Detention Facilities |
| 634 | Supervising Detention Services Officer of the Day |
| 635 | Transportation Deputy Bus Driver, Probation |
| 636 | Sheriff's Station Commander Expenses |
| 637 | Professional Development Expenses |
| 638 | Probation Telecom Equipment Bonus |
| 639 | Intern Housing Allowance LAC/USC Med. Center |
| 640 | Children's Services ERCP Retention |
| 641 | Shooting Bonus, Expert – Reserve |
| 642 | Shooting Bonus, Distinguished Expert – Reserve |
| 643 | Shooting Bonus, Marksman – Reserve |
| 644 | Shooting Bonus, Sharpshooter – Reserve |
| 645 | Welder Certification Bonus |
| 782 | FLSA Premium Pay for Regularly Scheduled Work Assignment |
| 903 | Non–Elective Leave Buyback |
| 910 | Sick Buyback |
| 911 | Vacation Buyback |
| 912 | Holiday Buyback |
| 913 | Sick Pre–71 Buyback |

| | |
|---|---|
| 914 | Sick Buyback–Probation 56 – Hour |
| 915 | Vacation Buyback – 56 Hour |
| 930 | Special Paid Leave Buyback |
| 931 | Appraisers Leave Buyback |
| 932 | Intern/Resident Leave Buyback |
| None | Emp Suggest |
| None | Park, Nontaxable |
| None | Park, Taxable |
| None | Prior Salary |
| None | Transportation Allow |
| None | Traffic Mitigation |

Any such additional item of remuneration may subsequently be included in ''compensation earnable'' pursuant to a memorandum of understanding between a county of the first class and any of its recognized employee organizations or a resolution adopted by its board of supervisors.

(c) No item of remuneration included in ''compensation earnable'' as a result of the court-approved settlement and as set forth in the resolution described above in subdivision (b) may be removed therefrom as a result of any subsequent judicial determination, except that a county of the first class and a recognized employee organization may agree only through a memorandum of understanding to exclude the item of remuneration from ''compensation earnable'' or the Board of Supervisors may adopt a resolution excluding the item of remuneration from ''compensation earnable'' with respect to nonrepresented employees.

(d) This section shall not be operative in the county until the board of supervisors, by resolution adopted by a majority vote, makes the provisions of this section applicable in the county.

SEC. 1.5. Section 31462.3 is added to the Government Code, to read:

31462.3. (a) For members participating in the designated plans who are employed by the County of Los Angeles on or after October 1, 2000, and who retire or die on or after July 1, 2001, ''final compensation'' means the average annual compensation earnable by a member during any year elected by the member at or before the time he or she files an application for retirement or, if the member fails to elect, during the year immediately preceding his or her retirement.

(b) As used in this section, the ''designated plans'' means the retirement plans sponsored by the County of Los Angeles that are commonly known as Retirement Plans B, C, and D for general members and Retirement Plan B for safety members.

(c) This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative.

SEC. 2. Section 31491.3 is added to the Government Code, to read:

31491.3. (a) Notwithstanding subdivision (f) of Section 31491, for those members retiring on or after the operative date of this section, the early retirement pension shall consist of an annual allowance payable in monthly installments for the life of the retired member in an amount that is the actuarial equivalent of the normal retirement pension to which the retired member would be entitled if otherwise eligible for normal retirement, which shall be computed by multiplying the normal retirement pension by the early retirement adjustment factor set forth opposite the member's age as of the birthday immediately preceding the date of retirement, in the following table:

| Age | ERA Factor |
|---|---|
| 55 | .3748 |
| 56 | .4109 |
| 57 | .4511 |
| 58 | .4957 |
| 59 | .5454 |
| 60 | .6009 |
| 61 | .6631 |
| 62 | .7328 |
| 63 | .8113 |
| 64 | .8998 |

(b) For those members retiring on or after the operative date of this section, paragraph (2) of subdivision (g) of Section 31491 shall not apply, but with regard to those members who have not attained the age of 62 years as of the date of retirement (1) future earnings in employment covered by the federal system shall be assumed to continue at the rate of pay received by the employee from the employer as of the date of retirement or the date of termination of employment of a vested member, whichever is applicable, until the member attains the age of 62 years, and (2) future wage bases, as defined by the federal system, shall be assumed to continue at the wage base in effect in the year of retirement or the year of termination of employment of a vested member, whichever is applicable, until the member attains the age of 62 years, and (3) cost-of-living increases in the year of retirement and delayed retirement credit provided under the federal system shall not be included in the calculation of the estimated primary insurance amount.

(c) Notwithstanding subdivision (e) or subdivision (j) of Section 31491, any member who retires on or after the operative date of this section, and after attaining the age of 62 years may, as soon as possible but not later than six months following retirement, present evidence required by the board demonstrating the retired member's actual primary insurance amount. For purposes of this subdivision, the actual primary insurance amount shall be the amount actually payable under the federal system on the retired member's date of retirement without regard to delayed retirement credit or any deductions on account of work, or the estimate of that amount as set forth on a current earnings and benefits estimate statement provided by the Social Security Administration. Following receipt of that evidence, the board shall adjust the retired member's pension from the date of retirement to equal the amount of the pension to which he or she would have been entitled on that date had the estimated primary insurance amount equaled the actual primary insurance amount.

(d) This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 3. Section 31492.1 is added to the Government Code, to read:

31492.1. (a) Notwithstanding the provisions of Section 31492, each monthly survivor allowance paid pursuant to subdivision (a) of Section 31492 on account of a member who retires on or after the operative date of this section shall be equal to 55 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision (b) of that section.

(b) This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 4. Section 31492.2 is added to the Government Code, to read:

31492.2. (a) Notwithstanding the provisions of Section 31492, each monthly survivor allowance paid on or after the operative date of this section pursuant to subdivision (a) of Section 31492 on account of a member who retires before the operative date of this section shall be equal to 55 percent of the retirement pension, if not modified in accordance with the optional survivor allowance in subdivision (b) of that section.

(b) This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 5. Section 31494 of the Government Code is amended to read:

31494. (a) General members may elect to transfer to the retirement plan created by this article upon proper application executed by the member and filed with the board. That transfer is voluntary and shall be irrevocable.

(b) The retirement benefits of the transferred members are governed and defined by this article.

(c) Transferring members relinquish and waive any and all previously available vested or accrued retirement, survivor, disability and death benefits. However, notwithstanding any other provision of this article, transferring members shall receive credit for public service performed prior to the transfer, including service with the employer, military service, and other public service to which the member would otherwise be eligible under this chapter, except that member contributions shall not be collected.

(d) This section shall be operative at any time or times as may be mutually agreed to in memoranda of understanding executed by the employer and employee representatives if the board of supervisors adopts, by majority vote, a resolution declaring that the section shall be operative.

(e) This section shall be superseded by Section 31494.2 in any county when Section 31494.2 becomes operative in the county.

SEC. 6. Section 31494.2 is added to the Government Code, to read:

31494.2. (a) A general member whose benefits are governed by Retirement Plan D may, during a period of active employment, elect to change plan membership and become a member, prospectively, in Retirement Plan E. The election shall be made upon written application signed by the member and filed with the board, pursuant to enrollment procedures and during an enrollment period established by the board, which enrollment period shall not occur more frequently than once every three years for that member. The change in plan membership shall be effective as of the transfer date, as defined in subdivision (d). Except as otherwise provided in this section, the rights and obligations of a member who elects to change membership under this section shall be governed by the terms of this article on and after the transfer date. Prior to the transfer date, the rights to retirement, survivors', or other benefits payable to a member and his or her survivors or beneficiaries shall continue to be governed by Retirement Plan D.

(b) Except as otherwise provided in this section, effective as of the transfer date, a member who has transferred to Retirement Plan E pursuant to this section and his or her survivors or beneficiaries shall receive retirement, survivors', and other benefits that shall consist of: (1) the benefits to which they are entitled under the terms of Retirement Plan E, but based on the member's service credited only under that plan, and payable at the time and in the manner provided under Retirement Plan

E, and (2) the benefits to which they would have been entitled under the terms of Retirement Plan D had the member remained a member of Retirement Plan D, but based on the member's service credited only under that plan, and payable at the time and in the manner provided under Retirement Plan D. Except as otherwise provided in this section, the calculation of the member's, survivors', or beneficiaries' benefits under each plan shall be subject to that plan's respective, separate terms, including, but not limited to, the definitions of ''final compensation'' and provisions establishing cost-of-living adjustments, establishing minimum retirement age and service requirements, and governing integration with federal social security payments. Notwithstanding the foregoing, the aggregate service credited under both retirement plans shall be taken into account for the purpose of determining eligibility for and vesting of benefits under each plan.

(c) Notwithstanding any other provision of Retirement Plan D or Retirement Plan E:

(1) A member who has transferred to Retirement Plan E pursuant to this section may not retire for disability and receive disability retirement benefits under Retirement Plan D.

(2) If a member who has transferred to Retirement Plan E pursuant to this section dies prior to retirement, that member's survivor or beneficiary may not receive survivor or death benefits under Retirement Plan D but shall receive a refund of the member's contributions to Retirement Plan D together with all interest credited thereto.

(d) As used in this section:

(1) ''Period of active employment'' means a period during which the member is actively performing the duties of a full-time or part-time employee position or is on any authorized paid leave of absence, except a leave of absence during which the member is totally disabled and is receiving, or is eligible to receive, disability benefits, either during or after any elimination or qualifying period, under a disability plan provided by the employer.

(2) ''Retirement Plan D'' means the contributory retirement plan otherwise available to new members of the system on the transfer date.

(3) ''Retirement Plan E'' means the noncontributory retirement plan established under this article.

(4) ''Transfer date'' means the first day of the first month that is at least 30 days after the date that the application is filed with the board to change plan membership under subdivision (a).

(e) This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 7. Section 31494.5 is added to the Government Code, to read:

31494.5. (a) A general member whose benefits are governed by Retirement Plan E may, during a period of active employment, elect to change plan membership and become a member, prospectively, in Retirement Plan D. The election shall be made upon written application signed by the member and filed with the board, pursuant to enrollment procedures and during an enrollment period established by the board, which enrollment period shall not occur more frequently than once every three years for that member. The change in plan membership shall be effective as of the transfer date, as defined in subdivision (g). Except as otherwise provided in this section, the rights and obligations of a member who elects to change membership under this section shall be governed by the terms of Retirement Plan D on and after the transfer date. Prior to the transfer date, the rights to retirement, survivors', or other benefits payable to a member and his or her survivors or beneficiaries shall continue to be governed by Retirement Plan E.

(b) If a member has made the election to change plans under subdivision (a), monthly contributions by the member and the employer under the terms of Retirement Plan D shall commence as of the transfer date. For the purposes of calculating the member's contribution rate under Retirement Plan D, his or her entry age shall be deemed to be his or her age at his or her birthday nearest the transfer date; however, if the member exchanges service credit in accordance with subdivision (c), with regard to contributions made for periods after that exchange, his or her entry age shall be adjusted and deemed to be the member's age at his or her birthday nearest the date on which begins the most recent period of unbroken service credited under Retirement Plan D, taking into account service purchased under subdivision (c). In no event shall the exchange of service under subdivision (c) affect the entry age with respect to, or the cost of, employee contributions made, or service purchased, prior to the exchange.

(c) A general member who has elected to change plans under subdivision (a) also may elect to exchange, at that time or any time thereafter, but prior to the earlier of his or her application for retirement, termination from employment, or death, some portion designated in whole-month increments, or all of the service credited under Retirement Plan E for an equivalent amount of service credited under Retirement Plan D, provided, however, that the member may not exchange less than 12 months service or, if less, the total service credited under Retirement Plan E. The exchange shall be effective on the date when the member completes the purchase of that service by depositing in the retirement fund, by lump sum or regular monthly installments, over the period of time determined by a resolution adopted by a majority vote of the board of retirement, or both, but in any event prior to the earlier of his or her death or the date that is 120 days after the effective date of his or her

retirement, the sum of: (1) the contributions the member would have made to the retirement fund under Retirement Plan D for that length of time for which the member shall receive credit as service under Retirement Plan D, computed in accordance with the rate of contribution applicable to the member under Retirement Plan D, based upon his or her entry age, and in the same manner prescribed under Retirement Plan D as if that plan had been in effect during the period for which the member shall receive service credit, and (2) the regular interest thereon.

For the purposes of this subdivision, a member's entry age shall be deemed to be the member's age at his or her birthday nearest the date on which begins the most recent period of unbroken service credited under Retirement Plan D following completion of the service exchange under this subdivision. A member may receive credit for a period of service under only one plan and in no event shall a member receive credit for the same period of service under both Retirement Plan D and Retirement Plan E.

A member who fails to complete the purchase of service as required under this subdivision shall be treated as completing an exchange of service under Retirement Plan E for an equivalent amount of service under Retirement Plan D only with regard to the service that actually has been purchased through completed deposit with the retirement fund of the requisite purchase amount, calculated in accordance with this subdivision.

(d) Except as otherwise provided in this section, effective as of the transfer date, a member who has transferred to Retirement Plan D pursuant to this section and his or her survivors or beneficiaries shall receive retirement, disability, survivors', death, or other benefits that shall consist of: (1) the benefits to which they are entitled under the terms of Retirement Plan D, but based on the member's service credited only under that plan, and payable at the time and in the manner provided under Retirement Plan D, and (2) the benefits to which they would have been entitled under the terms of Retirement Plan E had the member remained a member of Retirement Plan E, but based on the member's service credited only under that plan, and payable at the time and in the manner provided under Retirement Plan E. Except as otherwise provided in this section, the calculation of the portion of a member's or beneficiary's benefit that is attributable to each plan is subject to that plan's respective, separate terms, including, but not limited to, the definitions of ''final compensation'' and provisions establishing cost-of-living adjustments, establishing minimum age and service requirements, and governing integration with federal social security payments. Notwithstanding the foregoing, the aggregate service credited under both Retirement Plan D and Retirement Plan E shall be taken into account for the purpose of determining eligibility for, and vesting of, benefits under each plan.

(e) Notwithstanding any other provision of Retirement Plan D or Retirement Plan E, a member who transfers into Retirement Plan D under this section may retire for service-connected or nonservice-connected disability and receive disability benefits under Retirement Plan D only if he or she has either (1) completed two continuous years of active service after his or her most recent transfer date, or (2) earned five years of retirement service credit under Retirement Plan D after his or her most recent transfer date. A member who becomes disabled and retires before meeting either of these conditions (1) may apply for and receive only a deferred or service retirement allowance, and (2) for the purposes of calculating his or her retirement benefits under this section, shall be credited with service under Retirement Plan E as provided under subdivision (g) of Section 31488 during any period he or she is totally disabled and is receiving, or eligible to receive, disability benefits, either during or after any elimination or qualifying period, under a disability plan provided by the employer. If a member dies before he or she is eligible to retire and before completing either two continuous years of active service after the transfer date or earning five years of retirement service credit under Retirement Plan D after the transfer date, that member's beneficiary shall not be entitled to the survivor allowance under Section 31781.1 or 31781.12, if operative.

(f) Notwithstanding any other provisions of Retirement Plan D or Retirement Plan E, a member who has transferred to Retirement Plan D pursuant to this section and who retires for disability when eligible under this section and Retirement Plan D, may not also retire for service and receive service retirement benefits under Retirement Plan E. However, for the purpose of calculating disability benefits under Retirement Plan D, the ''sum to which he or she would be entitled as service retirement'' or his or her ''service retirement allowance,'' as those terms are used in Sections 31726, 31726.5, and 31727.4, shall consist of the blended benefit to which the member would be entitled under subdivision (d) if he or she retired for service, not just the service retirement benefit to which he or she would be entitled under Retirement Plan D.

(g) As used in this section:

(1) ''Active service'' means time spent on active, on-the-job performance of the duties of a full-time or part-time position and on any authorized paid leaves of absence; provided, however, that any authorized paid leave of absence or part-time service shall not constitute active service if the leave of absence or part-time service is necessitated by a preexisting disability, injury, or disease. The board of retirement shall determine whether or not a leave of absence or part-time service is necessitated by a preexisting disability, injury, or disease, and thus

excluded from the member's active service, based upon evidence presented by the employer and the member upon request by the board.

(2) ''Entry age'' means the age used for calculating the normal rate of contribution to Retirement Plan D with respect to a member who has transferred membership to Retirement Plan D under this section.

(3) ''Period of active employment'' means a period during which the member is actively performing the duties of a full-time or part-time employee position or is on any authorized paid leave of absence, except a leave of absence during which the member is totally disabled and is receiving, or is eligible to receive, disability benefits, either during or after any elimination or qualifying period, under a disability plan provided by the employer.

(4) ''Retirement Plan D'' means the contributory retirement plan otherwise available to new members of the retirement system on the transfer date.

(5) ''Retirement Plan E'' means the noncontributory retirement plan established under this article.

(6) ''Transfer date'' means the first day of the first month that is at least 30 days after the date that the application is filed with the board to change plan membership under subdivision (a).

(h) This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 8. Section 31495.5 is added to the Government Code, to read:

31495.5. (a) Notwithstanding any other provision of this article, every retirement allowance or death allowance payable, on or after the operative date of this section, to or on account of any member of Retirement Plan E who retires or dies or who has retired or died shall, as of April 1 each year, be increased or decreased by an amount equal to that member's automatic COLA, as defined in subdivision (e) and as calculated by the board of retirement before April 1 of each year. No decrease in the cost of living shall reduce an allowance below the amount being received by the member or his or her beneficiary on the effective date of the allowance or the operative date of this section, whichever is later.

(b) A Retirement Plan E member may elect to purchase an elective COLA, as defined in subdivision (e), with regard to some portion (designated in whole-month increments) or all of his or her months of Retirement Plan E service earned prior to the operative date of this section. The election shall be made upon written application signed by the member and filed with the board pursuant to election procedures and during election periods established by the board. The purchase of the elective COLA shall be effective only when the member has paid

contributions necessary to purchase the designated amount of service for which he or she shall receive the elective COLA. The amount of required contributions shall be determined by the board, subject to the following:

(1) The cost of purchasing service for elective COLA purposes shall be determined by the board of retirement such that no elective COLA liability shall be borne by the county and no diminution in the funding ratio of the system shall result.

(2) The cost charged to the member for purchasing the elective COLA service shall be based upon the assumption that the member retires at the age of 65 years.

(3) Members may pay for the elective COLA by lump-sum payment or monthly installments over a period to be determined by a resolution adopted by a majority vote of the board of retirement, or both, but in any event prior to the earlier of his or her death or the date that is 120 days after the effective date of his or her retirement.

(4) If a member fails to timely complete the purchase of his or her elective COLA, he or she shall receive an elective COLA calculated only with regard to that amount of service actually purchased.

(5) If a Retirement Plan E member dies prior to retirement, any contributions made toward the purchase of an elective COLA, and all interest credited thereto, shall be refunded to the deceased member's surviving spouse or, if there is no surviving spouse, to the deceased member's surviving child or children under the age of 18 years, divided among those children in equal amounts, or, if there is no surviving spouse or surviving child or children under the age of 18 years, to the deceased member's estate.

(c) If a Retirement Plan E member elects and purchases an elective COLA, then, notwithstanding any other provision of this article, every Retirement Plan E allowance or postretirement death allowance payable on and after the operative date of this section, to or on account of that member who retires or dies or who has retired or died shall, as of April 1 of each year, be increased or decreased by an amount equal to that member's elective COLA as calculated by the board of retirement before April 1 of each year. No decrease in the cost of living shall reduce an allowance below the amount being received by the member or his or her beneficiary on the effective date of the allowance or this provision, whichever is later.

Notwithstanding any other provisions of this section, if a member retires before attaining the age of 65 years, his or her elective COLA shall be actuarially reduced to reflect that earlier retirement age unless, within 120 days after his or her retirement, he or she contributes by lump-sum the amount necessary to complete the purchase of his or her elective COLA as determined by the board. If, upon a member's retirement, the board of retirement determines that a member has paid more

contributions than necessary to purchase his or her elective COLA in accordance with subdivision (b), the member shall receive a refund of those excess contributions and all interest credited thereto. Upon retirement or termination of employment, but before he or she begins receiving his or her elective COLA, a member may revoke his or her election to purchase an elective COLA and receive a refund of any contributions made toward the purchase of the elective COLA and all interest credited thereto.

(d) If a Retirement Plan E member or former member is totally disabled, begins receiving disability benefits, other than state-mandated benefits, under a disability plan provided by the employer on or after the operative date of this section, and, on or after that date, his or her employment terminates, then, for purposes of calculating the member's or former member's final compensation, his or her predisability compensation, as previously adjusted in accordance with this subdivision and paragraph (5) of subdivision (e), shall, as of April 1 of each year after his or her employment terminates and during a period for which he or she both remains totally disabled and earns ''service'' within the meaning of subdivision (g) of Section 31488, be increased or decreased by an amount equal to that member's or former member's predisability compensation adjustment as calculated by the board of retirement before April 1 of each year.

(e) As used in this section:

(1) ''Automatic COLA'' means, with respect to any member of Retirement Plan E, an amount equal to the allowance then being received (including any automatic or elective COLAs previously received), multiplied by a percentage (rounded to the nearest one-tenth of 1 percent) derived by taking the number of months of service the member earned on and after the operative date of this section, dividing by the member's total months of service, and multiplying by a percentage equal to the lesser of 2 percent or the percentage found by the board of retirement to approximate to the nearest one-half of 1 percent the percentage of annual increase or decrease in the cost of living as of January 1 of each year as shown by the then current CPI, as adjusted for the amount applied from a prior year. For purposes of applying this formula, the amount of any annual cost-of-living increase under the CPI in excess of the 2 percent maximum shall be accumulated and applied in future years in which the annual cost-of-living increase under the CPI is less than the 2 percent maximum.

(2) ''CPI'' means the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the area in which the county seat is situated.

(3) ''Elective COLA'' means, with respect to any member of Retirement Plan E, an amount equal to the allowance then being received

(including any automatic or elective COLAs previously received), multiplied by a percentage (rounded to the nearest one-tenth of 1 percent) derived by taking the number of months of service the member purchased in accordance with subdivision (b), dividing by the member's total months of service, and multiplying by a percentage equal to the lesser of 2 percent or the percentage found by the board of retirement to approximate to the nearest one-half of 1 percent the percentage of annual increase or decrease in the cost of living as of January 1 of each year as shown by the then current CPI, as adjusted for the amount applied from a prior year. For purposes of applying this formula, the amount of any annual cost-of-living increase under the CPI in excess of the 2 percent maximum shall be accumulated and applied in future years in which the annual cost-of-living increase under the CPI is less than the 2 percent maximum.

(4) ''Predisability compensation'' means a member's last 12 months of compensation earnable preceding the date his or her employment terminates while he or she is receiving disability benefits, other than state-mandated benefits, under a disability plan provided by the employer because he or she is totally disabled. The employer shall provide the board of retirement with the information necessary for a member's predisability compensation to be determined.

(5) ''Predisability compensation adjustment'' means, with respect to any member or former member of Retirement Plan E qualifying under subdivision (d), an amount equal to that member's or former member's predisability compensation as previously adjusted under this section, multiplied by a percentage equal to the lesser of 2 percent or the percentage found by the board of retirement to approximate to the nearest one-half of 1 percent the percentage of annual increase or decrease in the cost of living as of January 1, of each year as shown by the then current CPI, as adjusted for the amount applied from a prior year. For the purpose of applying this formula, the amount of any annual cost-of-living increase under the CPI in excess of the 2 percent maximum shall be accumulated and applied in future years in which the annual cost-of-living increase under the CPI is less than the 2 percent maximum.

(f) This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 9. Section 31760.12 is added to the Government Code, to read:

31760.12. Notwithstanding Section 31760.1, each survivor allowance paid pursuant to Section 31760.1 on account of a member who retires on or after the operative date of this section shall be equal to 65 percent of the member's monthly retirement allowance, if not

modified in accordance with one of the optional settlements specified in this article.

This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 10. Section 31760.13 is added to the Government Code, to read:

31760.13. (a) Notwithstanding Section 31760.1, each survivor allowance paid on or after the operative date of this section pursuant to Section 31760.1 on account of a member who retires before the operative date of this section shall be equal to 65 percent of the member's monthly retirement allowance, if not modified in accordance with one of the optional settlements specified in this article, as adjusted for the net cost-of-living percentage increase, if any, awarded to that survivor prior to the operative date of this section.

(b) This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 11. Section 31765.2 is added to the Government Code, to read:

31765.2. Notwithstanding Section 31765.1, each survivor allowance paid pursuant to Section 31765.1 on account of a member who dies on or after the operative date of this section shall be equal to 65 percent of the monthly retirement allowance to which the deceased member would have been entitled if he or she had retired on the date of death with a retirement allowance not modified in accordance with one of the optional settlements specified in this article.

This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 12. Section 31765.3 is added to the Government Code, to read:

31765.3. (a) Notwithstanding Section 31765.1, each survivor allowance paid on or after the operative date of this section pursuant to Section 31765.1 on account of a member who dies before the operative date of this section shall be equal to 65 percent of the monthly retirement allowance to which the deceased member would have been entitled if he or she had retired on the date of death with a retirement allowance not modified in accordance with one of the optional settlements specified in this article, as adjusted for the net cost-of-living percentage increase, if any, awarded to that survivor prior to the operative date of this section.

(b) This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county

elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 13. Section 31781.12 is added to the Government Code, to read:

31781.12. Notwithstanding Section 31781.1, each allowance paid pursuant to Section 31781.1 on account of a member who dies on or after the operative date of this section shall be equal to 65 percent of the monthly retirement allowance to which the deceased member would have been entitled, without modification in accordance with one of the optional settlements specified in this article, if he or she had retired, or been retired, by reason of a nonservice-connected disability as of the date of death.

This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 14. Section 31781.13 is added to the Government Code, to read:

31781.13. (a) Notwithstanding Section 31781.1, each allowance paid on or after the operative date of this section pursuant to Section 31781.1 on account of a member who dies before the operative date of this section shall be equal to 65 percent of the monthly retirement allowance to which the deceased member would have been entitled, without modification in accordance with one of the optional settlements specified in this article, if he or she had retired, or been retired, by reason of a nonservice connected disability as of the date of death, adjusted for the net cost-of-living percentage increase, if any, awarded to that survivor prior to the operative date of this section.

(b) This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 15. Section 31785.4 is added to the Government Code, to read:

31785.4. Notwithstanding Section 31785, each survivor allowance paid pursuant to Section 31785 on account of a safety member who retires on or after the operative date of this section shall be equal to 65 percent of the member's monthly retirement allowance, if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760).

This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 16. Section 31785.5 is added to the Government Code, to read:

31785.5. (a) Notwithstanding Section 31785, each survivor allowance paid on or after the operative date of this section pursuant to Section 31785 on account of a safety member who retires before the operative date of this section shall be equal to 65 percent of the member's monthly retirement allowance, if not modified in accordance with one of the optional settlements specified in Article 11 (commencing with Section 31760), as adjusted for the net cost-of-living percentage increase, if any, awarded to that survivor prior to the operative date of this section.

(b) This section shall only be applicable to Los Angeles County and shall not become operative until the board of supervisors of that county elects, by resolution adopted by a majority vote, to make this section operative in the county.

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 implement the provisions of a memorandum of understanding that is currently in effect with respect to Los Angeles County employees, it is necessary that this act take effect immediately.

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## CHAPTER 779

An act to amend Sections 13140.5 and 13140.6 of the Health and Safety Code, relating to the State Fire Marshal.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 13140.5 of the Health and Safety Code is amended to read:

13140.5. The board shall be composed of the following voting members: the State Fire Marshal, the Chief Deputy Director of the Department of Forestry and Fire Protection who is not the State Fire Marshal, the Director of the Office of Emergency Services, the Chairperson of the California Fire Fighter Joint Apprenticeship Program, one representative of the insurance industry, one volunteer firefighter, three fire chiefs, five fire service labor representatives, one representative from city government, one representative from a fire district, and one representative from county government.

The following members shall be appointed by the Governor: one representative of the insurance industry, one volunteer firefighter, three fire chiefs, five fire service labor representatives, one representative from city government, one representative from a fire district, and one representative from county government. Each member appointed shall be a resident of this state. The volunteer firefighter shall be selected from a list of names submitted by the California State Firefighters Association. One fire chief shall be selected from a list of names submitted by the California Fire Chiefs' Association; one fire chief shall be selected from a list of names submitted by the Fire Districts Association of California; and one fire chief shall be selected from a list of names submitted by the California Metropolitan Fire Chiefs. One fire service labor representative shall be selected from a list of names submitted by the California Labor Federation; one fire service labor representative shall be selected from a list of names submitted by the California Professional Firefighters; one fire service labor representative shall be selected from a list of names submitted by the International Association of Fire Fighters; one fire service labor representative shall be selected from a list of names submitted by the California Department of Forestry Firefighters; and one fire service labor representative shall be selected from a list of names submitted by the California State Firefighters Association. The city government representative shall be selected from elected or appointed city chief administrative officers or elected city mayors or council members. The fire district representative shall be selected from elected or appointed directors of fire districts. The county government representative shall be selected from elected or appointed county chief administrative officers or elected county supervisors. The appointed members shall be appointed for a term of four years. Any member chosen by the Governor to fill a vacancy created other than by expiration of a term shall be appointed for the unexpired term of the member he or she is to succeed.

SEC. 2. Section 13140.6 of the Health and Safety Code is amended to read:

13140.6. A quorum of the board shall consist of not less than nine members of the board. Proxy representation shall not be permitted.

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## CHAPTER 780

An act to add Section 19844.7 to the Government Code, relating to state employees.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 19844.7 is added to the Government Code, to read:

19844.7. (a) Pursuant to regulations adopted by the Department of Personnel Administration, and subject to the collective bargaining agreement between the state and the employee's exclusive representative, a state employee who has been appointed as a member of a precinct board and takes time off from state employment to serve as a member of that precinct board on election day shall receive payment of his or her regular wages or salary for that election day, without forfeiting any compensation received for his or her service as a precinct board member. As used in this section, ''state employee'' does not include any officer or employee appointed or employed by the Legislature, or any officer, deputy, or employee selected or appointed by an elected state officer.

(b) The eligibility of a state employee to receive time off for the purposes of subdivision (a) shall be subject to approval of the employee's manager or supervisor and pursuant to the terms of the collective bargaining agreement, when applicable.

(c) The Department of Personnel Administration shall adopt regulations to implement this section. The regulations shall include, among other things, consideration of such items as the impact of the employee's absence on state services and operations and the documentation necessary for a state employee to establish that he or she has taken time off from state employment to serve as a member of a precinct board and is therefore eligible to receive his or her regular wages or salary as provided in subdivision (a). The regulations required by this section shall be drafted and adopted as soon as practicable.

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## CHAPTER 781

An act to amend Section 20816 of the Government Code, relating to retirement benefits.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 20816 of the Government Code is amended to read:

20816. (a) Notwithstanding any other provision of this part, all assets of an employer shall be used in the determination of the employer contribution rate for the membership comprising the basis of the computation. Assets held shall be recognized over the same funding period used to amortize unfunded accrued actuarial obligations whether in excess of the accrued actuarial obligation or not, using the entry age normal funding method.

(b) On and after January 1, 1999, contracting agencies for which the actuarial value of assets exceeds the present value of benefits as of the most recently completed valuation, as determined by the chief actuary, may request that the board transfer employer assets to member-accumulated contribution accounts to satisfy all member contributions required by this part. That transfer shall be over a 12-month period provided the actuarial value of assets exceeds the present value of benefits. In determining the present value of benefits and the actuarial value of assets for purposes of this part, liabilities and assets attributed to the 1959 survivor allowance shall not be included.

(c) On and after January 1, 2002, any contracting agency for which the actuarial value of assets exceeds the present value of benefits as of the most recently completed valuation, as determined by the chief actuary, may request that the board transfer from the contracting agency's employer account excess assets, as determined by the board subject to the requirements and limitations of Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420), to a retiree health account established by the board, in its discretion, in the contracting agency's employer account pursuant to Section 401(h) of the Internal Revenue Code (26 U.S.C. 401(h)) for the purpose of providing health benefits to the contracting agency's retirees and their covered dependents. The board may, in its discretion, transfer excess assets from the contracting agency's employer account to that contracting agency's retiree health account within that agency's employer account, provided the transfer meets the conditions of a qualified transfer pursuant to Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420). The transferred assets shall be used solely for the payment of current retiree health liabilities. That qualified transfer shall be made only once each year. The board may adopt regulations necessary to implement this subdivision. Notwithstanding any other provision of law, the regulations may provide for the nonforfeiture of accrued pension benefits of participants and beneficiaries of a plan from which excess assets are transferred to the extent necessary for the transfer to meet the conditions of a qualified transfer pursuant to Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420), and may include any other provision necessary under Section 420 of the Internal Revenue Code (26 U.S.C. Sec. 420) or Section 401(h)

of the Internal Revenue Code (26 U.S.C. Sec. 401(h)) to accomplish the purposes of this subdivision.

(d) For the purpose of this section, ''employer'' means any contracting agency, the state, or a school employer.

(e) The actuarial report in the annual financial report shall also express the effect upon employer contribution rates of this section and of the recognition of net unrealized gains and losses.

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## CHAPTER 782

An act to amend Sections 20677 and 31621.11 of, and to add Sections 21354.3, 21354.4, 21354.5, 31621.8, 31676.17, 31676.18, 31676.19, and 31808.9 to, the Government Code, relating to public employees' retirement, and making an appropriation therefor.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 20677 of the Government Code is amended to read:

20677. (a) (1) The normal rate of contribution for a state miscellaneous member whose service is not included in the federal system shall be 6 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered on and after July 1, 1976.

(2) The normal rate of contribution for a school member or a local miscellaneous member shall be 7 percent of the compensation paid that member for service rendered on and after June 21, 1971.

(3) Notwithstanding paragraph (2), the normal rate of contribution for a local miscellaneous member subject to Section 21354.3, 21354.4, or 21354.5 shall be 8 percent of the compensation paid that member for service rendered on and after the date the member's contracting agency elects to be subject to that section.

(4) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service is not included in the federal system, shall be 6 percent of the member's compensation.

(5) The normal rate of contribution as established under this subdivision for a member whose service is included in the federal system, and whose service retirement allowance is reduced under Section 21353, 21353.5, 21354, 21354.1, 21354.3, 21354.4, or 21354.5

because of that inclusion, shall be reduced by one-third as applied to compensation not exceeding four hundred dollars ($400) per month for service after the date of execution of the agreement including service in the federal system and prior to termination of the agreement with respect to the coverage group to which he or she belongs. Notwithstanding the foregoing, effective January 1, 2001, the normal rate of contribution for school members whose service is included in the federal system shall not be reduced pursuant to this paragraph as applied to compensation earned on or after that date.

(b) (1) The normal rate of contribution for a state miscellaneous member whose service has been included in the federal system shall be 5 percent of compensation in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered on and after July 1, 1976.

(2) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service has been included in the federal system, shall be 5 percent of compensation, subject to the reduction specified in paragraph (5) of subdivision (a).

(c) The normal rate of contribution for a state miscellaneous or state industrial member who is subject to Section 21076 or Section 21077 shall be 0 percent.

(d) A member who elected to become subject to Section 21353 solely for service rendered on or after the effective date of the election, as authorized by subdivision (c) of Section 21070 during the period between November 1, 1988, and October 31, 1989, is not required to make the contributions specified in Section 21073.

(e) A member who elects to become subject to Section 21353 or 21354.1, as applicable, shall contribute at the rate specified in paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b), as determined by the member's status with the federal system, and the rate shall be applied from the first of the month following the date of the election. A member who makes the election shall also contribute for service prior to the date the contribution rate was applied, in the manner specified in Section 21073 or 21073.1, as applicable.

SEC. 1.5. Section 20677 of the Government Code is amended to read:

20677. (a) (1) The normal rate of contribution for a state miscellaneous member whose service is not included in the federal system shall be 6 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered on and after July 1, 1976.

(2) The normal rate of contribution for a local miscellaneous member shall be 7 percent of the compensation paid that member for service rendered on and after June 21, 1971.

(3) The normal rate of contribution for a school member shall be 5 percent of the compensation paid that member for service rendered on and after January 1, 2002.

(4) Notwithstanding paragraph (2), the normal rate of contribution for a local miscellaneous member subject to Section 21354.3, 21354.4, or 21354.5 shall be 8 percent of the compensation paid that member for service rendered on and after the date the member's contracting agency elects to be subject to that section.

(5) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service is not included in the federal system, shall be 6 percent of the member's compensation.

(6) The normal rate of contribution as established under this subdivision for a member whose service is included in the federal system, and whose service retirement allowance is reduced under Section 21353, 21353.5, 21354, 21354.1, 21354.3, 21354.4, or 21354.5 because of that inclusion, shall be reduced by one-third as applied to compensation not exceeding four hundred dollars ($400) per month for service after the date of execution of the agreement including service in the federal system and prior to termination of the agreement with respect to the coverage group to which he or she belongs. Notwithstanding the foregoing, effective January 1, 2001, the normal rate of contribution for school members whose service is included in the federal system shall not be reduced pursuant to this paragraph as applied to compensation earned on or after that date.

(b) (1) The normal rate of contribution for a state miscellaneous member whose service has been included in the federal system shall be 5 percent of compensation in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered on and after July 1, 1976.

(2) The normal rate of contribution for a state miscellaneous or industrial member, who has elected to be subject to Section 21353.5 and whose service has been included in the federal system, shall be 5 percent of compensation, subject to the reduction specified in paragraph (6) of subdivision (a).

(c) The normal rate of contribution for a state miscellaneous or state industrial member who is subject to Section 21076 or Section 21077 shall be 0 percent.

(d) A member who elected to become subject to Section 21353 solely for service rendered on or after the effective date of the election, as authorized by subdivision (c) of Section 21070 during the period

between November 1, 1988, and October 31, 1989, is not required to make the contributions specified in Section 21073.

(e) A member who elects to become subject to Section 21353 or 21354.1, as applicable, shall contribute at the rate specified in paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b), as determined by the member's status with the federal system, and the rate shall be applied from the first of the month following the date of the election. A member who makes the election shall also contribute for service prior to the date the contribution rate was applied, in the manner specified in Section 21073 or 21073.1, as applicable.

SEC. 2. Section 21354.3 is added to the Government Code, to read:

21354.3. (a) The combined current and prior service pensions for a local miscellaneous member is a pension derived from the contributions of the employer sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of retirement, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current and prior service except service in a category of membership other than that of local miscellaneous member with which the member is entitled to be credited at retirement:

| Age at Retirement | Fraction |
|---|---|
| 50 | 1.0000 |
| 50 1/4 | 1.0125 |
| 50 1/2 | 1.0250 |
| 50 3/4 | 1.0375 |
| 51 | 1.0500 |
| 51 1/4 | 1.0625 |
| 51 1/2 | 1.0750 |
| 51 3/4 | 1.0875 |
| 52 | 1.1000 |
| 52 1/4 | 1.1125 |
| 52 1/2 | 1.1250 |
| 52 3/4 | 1.1375 |
| 53 | 1.1500 |
| 53 1/4 | 1.1625 |
| 53 1/2 | 1.1750 |
| 53 3/4 | 1.1875 |

| | |
|---|---|
| 54 | 1.2000 |
| 54 1/4 | 1.2125 |
| 54 1/2 | 1.2250 |
| 54 3/4 | 1.2375 |
| 55 | 1.2500 |
| 55 1/4 | 1.2625 |
| 55 1/2 | 1.2750 |
| 55 3/4 | 1.2875 |
| 56 | 1.3000 |
| 56 1/4 | 1.3125 |
| 56 1/2 | 1.3250 |
| 56 3/4 | 1.3375 |
| 57 | 1.3500 |
| 57 1/4 | 1.3625 |
| 57 1/2 | 1.3750 |
| 57 3/4 | 1.3875 |
| 58 | 1.4000 |
| 58 1/4 | 1.4125 |
| 58 1/2 | 1.4250 |
| 58 3/4 | 1.4375 |
| 59 | 1.4500 |
| 59 1/4 | 1.4625 |
| 59 1/2 | 1.4750 |
| 59 3/4 | 1.4875 |
| 60 and over | 1.5000 |

(b) The fraction specified in the above table shall be reduced by one-third as applied to that part of final compensation that does not exceed four hundred dollars ($400) per month for all services of a member any of whose service has been included in the federal system. This reduction shall not apply to a member employed by a contracting agency that enters into a contract after July 1, 1971, and who elects not to be subject to this paragraph or with respect to service rendered after the termination of coverage under the federal system with respect to the coverage group to which the member belongs.

(c) This section shall supersede Sections 21353 and 21354 with respect to any local miscellaneous member who is employed by a contracting agency on or after the date this section becomes applicable to the contracting agency.

(d) This section shall not apply to a contracting agency nor its employees until the contracting agency elects to make all local miscellaneous members subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local miscellaneous member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section.

SEC. 3. Section 21354.4 is added to the Government Code, to read:

21354.4. (a) The combined current and prior service pensions for a local miscellaneous member is a pension derived from the contributions of the employer sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of retirement, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current and prior service except service in a category of membership other than that of local miscellaneous member with which the member is entitled to be credited at retirement:

| Age at Retirement | Fraction |
|---|---|
| 50 | 1.0000 |
| 50 1/4 | 1.0125 |
| 50 1/2 | 1.0250 |
| 50 3/4 | 1.0375 |
| 51 | 1.0500 |
| 51 1/4 | 1.0625 |
| 51 1/2 | 1.0750 |
| 51 3/4 | 1.0875 |
| 52 | 1.1000 |
| 52 1/4 | 1.1125 |
| 52 1/2 | 1.1250 |
| 52 3/4 | 1.1375 |
| 53 | 1.1500 |
| 53 1/4 | 1.1625 |
| 53 1/2 | 1.1750 |
| 53 3/4 | 1.1875 |
| 54 | 1.2000 |
| 54 1/4 | 1.2125 |

| | |
|---|---|
| 54 1/2 | 1.2250 |
| 54 3/4 | 1.2375 |
| 55 and over | 1.2500 |

(b) The fraction specified in the above table shall be reduced by one-third as applied to that part of final compensation that does not exceed four hundred dollars ($400) per month for all service of a member any of whose service has been included in the federal system. This reduction shall not apply to a member employed by a contracting agency that enters into a contract after July 1, 1971, and who elects not to be subject to this paragraph or with respect to service rendered after the termination of coverage under the federal system with respect to the coverage group to which the member belongs.

(c) This section shall supersede Sections 21353 and 21354 with respect to any local miscellaneous member who is employed by a contracting agency on or after the date this section becomes applicable to the contracting agency.

(d) This section shall not apply to a contracting agency nor its employees until the contracting agency elects to make all local miscellaneous members subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local miscellaneous member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section.

SEC. 4. Section 21354.5 is added to the Government Code, to read:

21354.5. (a) The combined current and prior service pensions for a local miscellaneous member is a pension derived from the contributions of the employer sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of retirement, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table, multiplied by the number of years of current and prior service, except service in a category of membership other than that of a local miscellaneous member, with which the member is entitled to be credited at retirement:

| Age of Retirement | Fraction |
|---|---|
| 50 | 1.0000 |
| 50 1/4 | 1.0175 |
| 50 1/2 | 1.0350 |

| | |
|---|---|
| 50 3/4 | 1.0525 |
| 51 | 1.0700 |
| 51 1/4 | 1.0875 |
| 51 1/2 | 1.1050 |
| 51 3/4 | 1.1225 |
| 52 | 1.1400 |
| 52 1/4 | 1.1575 |
| 52 1/2 | 1.1750 |
| 52 3/4 | 1.1925 |
| 53 | 1.2100 |
| 53 1/4 | 1.2275 |
| 53 1/2 | 1.2450 |
| 53 3/4 | 1.2625 |
| 54 | 1.2800 |
| 54 1/4 | 1.2975 |
| 54 1/2 | 1.3150 |
| 54 3/4 | 1.3325 |
| 55 and over | 1.3500 |

(b) The fractions specified in the above table shall be reduced by one-third as applied to that part of final compensation that does not exceed four hundred dollars ($400) per month for all service of a member any of whose service has been included in the federal system. This reduction shall not apply to a member employed by a contracting agency that enters into a contract after July 1, 1971, and elects not to be subject to this paragraph or with respect to service rendered after the termination of coverage under the federal system with respect to the coverage group to which the member belongs.

(c) This section shall supersede Sections 21353 and 21354 with respect to any miscellaneous member who is employed by a contracting agency on or after the date this section becomes applicable to the contracting agency.

(d) This section shall not apply to a contracting agency nor its employees until the contracting agency elects to make all local miscellaneous members subject to it by amendment to its contract made in the manner prescribed for approval of contracts or in the case of a new contract, by express provision of the contract. The operative date of this section with respect to a local miscellaneous member shall be the effective date of the amendment to his or her employer's contract electing to be subject to this section.

SEC. 5. Section 31621.11 of the Government Code is amended to read:

31621.11. Instead of the normal rates of contribution required by Section 31621, 31621.1, 31621.2, or 31621.8 the board may, upon actuarial advice, establish a single rate of contributions applicable to all persons becoming members after this section is made operative in that county by the board. However, this rate shall be such as to provide the average annuity described in Section 31621, 31621.1, 31621.2, or 31621.8.

SEC. 6. Section 31621.8 is added to the Government Code, to read:

31621.8. In counties adopting Section 31676.17, 31676.18, or 31676.19, the normal rates of contribution, except for members covered by Article 6.8 (commencing with Section 31639), shall be rates that provide an average annuity at the age of 55 years equal to one one-hundredth of the final compensation of members not covered by Article 6.8, according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

SEC. 7. Section 31676.17 is added to the Government Code, to read:

31676.17. This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county. Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

| Age at Retirement | Fraction |
|---|---|
| 50 | 1.0000 |
| 50 1/4 | 1.0125 |
| 50 1/2 | 1.0250 |
| 50 3/4 | 1.0375 |
| 51 | 1.0500 |
| 51 1/4 | 1.0625 |
| 51 1/2 | 1.0750 |

| | |
|---|---|
| 51 3/4 | 1.0875 |
| 52 | 1.1000 |
| 52 1/4 | 1.1125 |
| 52 1/2 | 1.1250 |
| 52 3/4 | 1.1375 |
| 53 | 1.1500 |
| 53 1/4 | 1.1625 |
| 53 1/2 | 1.1750 |
| 53 3/4 | 1.1875 |
| 54 | 1.2000 |
| 54 1/4 | 1.2125 |
| 54 1/2 | 1.2250 |
| 54 3/4 | 1.2375 |
| 55 | 1.2500 |
| 55 1/4 | 1.2625 |
| 55 1/2 | 1.2750 |
| 55 3/4 | 1.2875 |
| 56 | 1.3000 |
| 56 1/4 | 1.3125 |
| 56 1/2 | 1.3250 |
| 56 3/4 | 1.3375 |
| 57 | 1.3500 |
| 57 1/4 | 1.3625 |
| 57 1/2 | 1.3750 |
| 57 3/4 | 1.3875 |
| 58 | 1.4000 |
| 58 1/4 | 1.4125 |
| 58 1/2 | 1.4250 |
| 58 3/4 | 1.4375 |
| 59 | 1.4500 |
| 59 1/4 | 1.4625 |
| 59 1/2 | 1.4750 |
| 59 3/4 | 1.4875 |
| 60 and over | 1.5000 |

In any county operating under this section any limitations in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Wherever in this chapter reference is made to survivorship benefits and rights under Section 31676.1, the same shall apply to this section.

This section shall apply to members employed by the county on or after the date this section becomes in the county.

SEC. 8. Section 31676.18 is added to the Government Code, to read:

31676.18. This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county. Notwithstanding any other provisions of this chapter, the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

| Age at Retirement | Fraction |
|---|---|
| 50 | 1.0000 |
| 50 1/4 | 1.0125 |
| 50 1/2 | 1.0250 |
| 50 3/4 | 1.0375 |
| 51 | 1.0500 |
| 51 1/4 | 1.0625 |
| 51 1/2 | 1.0750 |
| 51 3/4 | 1.0875 |
| 52 | 1.1000 |
| 52 1/4 | 1.1125 |
| 52 1/2 | 1.1250 |
| 52 3/4 | 1.1375 |
| 53 | 1.1500 |
| 53 1/4 | 1.1625 |
| 53 1/2 | 1.1750 |
| 53 3/4 | 1.1875 |
| 54 | 1.2000 |
| 54 1/4 | 1.2125 |

| | |
|---|---|
| 54 1/2 | 1.2250 |
| 54 3/4 | 1.2375 |
| 55 and over | 1.2500 |

In any county operating under this section, any limitations in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Wherever in this chapter reference is made to survivorship benefits and rights under Section 31676.1, the same shall apply to this section.

This section shall apply to members employed by the county on or after the date this section becomes operative in the county.

SEC. 9. Section 31676.19 is added to the Government Code, to read:

31676.19. This section may be made applicable in any county on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution providing that this section shall become applicable in the county. Notwithstanding any other provisions of this chapter the current service pension or the current service pension combined with the prior service pension is an additional pension for members purchased by the contributions of the county or district sufficient, when added to the service retirement annuity, to equal the fraction of one-fiftieth of the member's final compensation set forth opposite the member's age at retirement, taken to the preceding completed quarter year, in the following table multiplied by the number of years of current service or years of current and prior service with which the member is entitled to be credited at retirement, but in no event shall the total retirement allowance exceed the member's final compensation.

| Age of Retirement | Fraction |
|---|---|
| 50 | 1.0000 |
| 50 1/4 | 1.0175 |
| 50 1/2 | 1.0350 |
| 50 3/4 | 1.0525 |
| 51 | 1.0700 |
| 51 1/4 | 1.0875 |
| 51 1/2 | 1.1050 |
| 51 3/4 | 1.1225 |
| 52 | 1.1400 |
| 52 1/4 | 1.1575 |
| 52 1/2 | 1.1750 |
| 52 3/4 | 1.1925 |

| | |
|---|---|
| 53 | 1.2100 |
| 53 1/4 | 1.2275 |
| 53 1/2 | 1.2450 |
| 53 3/4 | 1.2625 |
| 54 | 1.2800 |
| 54 1/4 | 1.2975 |
| 54 1/2 | 1.3150 |
| 54 3/4 | 1.3325 |
| 55 and over | 1.3500 |

In any county operating under this section any limitations in any provisions of this chapter upon the amount of compensation used for computing rates of contributions shall be disregarded.

Wherever in this chapter reference is made to survivorship benefits and rights under Section 31676.1, the same shall apply to this section.

This section shall apply to members employed by the county on or after the date this section becomes operative in the county.

SEC. 10. Section 31808.9 is added to the Government Code, to read:

31808.9. In any county or district, subject to Section 31676.17, 31676.18, or 31676.19, that adopts or has already adopted the provisions of this article, the retirement allowance of members subject to Section 31676.17, 31676.18, or 31676.19 shall be computed according to either the provisions of subdivision (a) or subdivision (b) of this section as selected by the board of supervisors.

(a) The retirement allowance for service rendered prior to the effective date of this article as specified in the resolution mentioned in Section 31800 shall be computed in accordance with the provisions of Section 31676.17, 31676.18, or 31676.19, as applicable. The retirement allowance of any member with respect to service performed after the effective date of this article as specified in the resolution mentioned in Section 31800 shall equal the total of the following:

(1) The fraction of one seventy-fifth of the first three hundred fifty dollars ($350) monthly of the member's final compensation set forth in the table appearing in Section 31676.17, 31676.18, or 31676.19, as applicable, in the column applicable to his or her age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service as provided therein.

(2) The fraction of one-fiftieth of any remaining portion of the member's final compensation set forth in the table appearing in Section 31676.17, 31676.18, or 31676.19, as applicable, in the column applicable to his or her age at retirement taken to the preceding completed quarter year multiplied by the number of years of creditable service.

(b) The retirement allowance shall be computed according to the provisions of Section 31676.17, 31676.18, or 31676.19, as applicable, and federal old age and survivors' insurance coverage shall be on an additive or supplemental basis.

SEC. 11. Section 1.5 of this bill incorporates amendments to Section 20677 of the Government Code proposed by both this bill and AB 118. 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 20677 of the Government Code, and (3) this bill is enacted after AB 118, in which case Section 1 of this bill shall not become operative.

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## CHAPTER 783

An act to amend Sections 19455 and 19481.5 of the Business and Professions Code, relating to horse racing.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 19455 of the Business and Professions Code, as added by Chapter 198 of the Statutes of 2001, is amended to read:

19455. (a) The Legislature finds and declares that Section 923 of the Labor Code recognizes that it is necessary that the individual worker have full freedom of association, self-organization, and designation of representatives of his or her own choosing, to negotiate the terms and conditions of his or her employment, and that he or she shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining.

(b) The Legislature finds that the National Labor Relations Board has formally declined to assert jurisdiction over horse racing because of extensive state control over the industry, the dominant pattern of sporadic short-term employment which poses problems for the effective enforcement of the National Labor Relations Act, and a unique and special relationship that has developed between the states and the industry.

(c) It is the intent of the Legislature to establish an orderly procedure for backstretch employees to exercise their statutory rights to organize a labor union, in order to reduce the prospect of any strikes, disruptions, or economic action that would interfere with the operation of horse racing meetings in California.

(d) Except as provided in subdivision (e), the board shall oversee the conduct of a union recognition procedure for backstretch employees under the following conditions:

(1) Employees shall have the right to join, or refuse to join, a labor organization for purposes of collective bargaining and mutual aid and protection. Existing state-recognized organizations of trainers or horsemen established pursuant to the Horse Racing Law shall not use funds derived or distributed from parimutuel wagering pursuant to state law to advocate or advance any position with respect to unionization of employees. Individual trainers and horsemen, and their agents, shall not coerce or threaten any employee of any trainer or horseman because of the exercise of rights pursuant to this article. No employee shall be discharged or discriminated against for expressing any opinion concerning the selection of a labor union or collective bargaining agent for employees under this article. No trainer or horseman, or group of trainers or horsemen, shall dominate or interfere with the formation or administration of any labor organization established under this article nor contribute financial or other support to it.

(2) The labor union and its representatives shall not coerce or threaten any employee of any trainer or horseman because of the exercise of rights pursuant to this article.

(3) Notwithstanding any other provision of law, within 30 days of a request by a bona fide labor organization representing workers in the horse racing industry in California, accompanied by a petition of 125 licensed backstretch workers, the board shall provide the labor organization with a list of all backstretch workers including the type of licenses they hold, their employer, the location at which they are employed, and their address and telephone number. The board may require of any trainer licensee information in the licensee's possession necessary to comply with this requirement. The labor union shall use this list solely for the purposes of this article, and maintain it in a manner, as the board may require, to preserve the integrity of horse racing. The board may impose an appropriate penalty for any other use.

(4) Every licensed trainer who employs backstretch employees shall file with the board, not later than February 1, 2002, and, within seven days of the commencement of each race meeting thereafter, a complete and accurate list of the names of its backstretch workers. In addition, every trainer shall file with the board a complete, accurate, and updated list within seven days of any changes which occur to the most recently filed list. The lists described in this section, together with any updates thereto, shall be provided within 72 hours after receipt by the board, to any bona fide labor organization which has requested copies thereof and submitted a petition containing the names of 125 backstretch workers pursuant to paragraph (3). Any such request need only be made one time

and the board shall thereafter be required to provide these lists and any updates thereto in accordance with the provisions of this section so long as a bona fide labor organization seeks to represent licensed backstretch workers.

(5) The labor union may obtain board recognition as the exclusive bargaining agent for employees of employers pursuant to the provisions and procedures described in paragraph (8).

(6) For the purposes of this article:

(A) ''Backstretch employee'' or ''backstretch worker'' means a person licensed by the board pursuant to subdivision (c) of Section 1481 of Division 4 of Title 4 of the California Code of Regulations.

(B) ''Multiemployer bargaining unit'' means any bargaining unit created and recognized pursuant to the terms of clause (iii) of subparagraph (A) of paragraph (8).

(C) ''Approved election unit'' means any election unit created and recognized pursuant to paragraph (7).

(7) There are four election units created and recognized pursuant to this section, as follows:

(A) Backstretch employees working for trainers of thoroughbred horses stabled at licensed racetracks, including fairs and approved auxiliary training facilities in the combined central and southern zones.

(B) Backstretch employees working for trainers of thoroughbred horses stabled at licensed racetracks, including fairs and approved auxiliary training facilities in the northern zone.

(C) Backstretch employees working for trainers of quarter horses stabled at licensed racetracks and approved auxiliary training facilities in the combined central and southern zones.

(D) Backstretch employees working for trainers of harness horses stabled at licensed racetracks, including fairs and approved auxiliary training facilities in the northern zone.

The board shall use the California State Mediation and Conciliation Service for all appropriate purposes of this act, including operations related to the conduct of recognition procedures and elections.

(8) (A) With respect to backstretch workers, a labor organization seeking recognition as the collective bargaining agent for these workers shall collect signed cards indicating individual worker's intent to be represented by that organization for collective bargaining purposes and submit those cards to the California State Mediation and Conciliation Service for review and validation. When the labor organization is in receipt of cards signed by workers equaling at least 30 percent of the employees in an election unit described in paragraph (4), the California State Mediation and Conciliation Service shall conduct a secret ballot election with respect to the election unit as soon as is practicable

thereafter, but in no event more than 30 calendar days after validation by the service of the cards.

Those backstretch employees entitled to vote in the election shall be those who appear on the licensed trainer's most recent list described in paragraph (3). However, each employer may update his or her list not more than 72 hours prior to the election. If it is determined by the stewards pursuant to the provisions in paragraph (11), that the employer filed an inaccurate or erroneous list with a willful intention to manipulate the results of an election, and that the inaccuracy or error may have affected the outcome of the election, the stewards shall decree that the employer lost the election, regardless of the actual outcome thereof, and the stewards shall issue an order to the trainer to negotiate with the union.

(i) Any election shall be conducted by the California State Mediation and Conciliation Service under rules established by the service consistent with standard practice. The rules shall be established no more than 60 days after the effective date of this section, shall be made available to the bona fide labor union and employers of backstretch employees, and shall be exempt from the Administrative Procedure Act. The rules shall provide for a secret ballot system for the conduct of the election pursuant to which ballots cast by backstretch employees of individual employers shall be cast by insertion into envelopes appropriately identified with respect to each employer. The envelopes shall be collected and tabulated in secret by the service, subject to observation by one representative designated by the bona fide labor organization and one representative designated by the organization representing trainers pursuant to subdivision (a) of Section 19613.2. Upon completion of the tabulation, the service shall issue a report certifying those employers, the majority of whose employees who participated in the election voted in favor of representation by the union. Those employers so certified shall be required to bargain with the labor union pursuant to this subdivision. All other employers shall not be required to negotiate with the union and there shall not be another election with respect to those employers for at least one year from the date of the prior election. The service shall not make public the numerical tabulation of votes by employer.

(ii) Protests over challenged ballots shall be resolved by the service in a consolidated hearing commencing no later than three business days after the election.

(iii) Within 45 days of the certification of the results of the election by the service to the board, those trainers who are required to bargain pursuant to this subparagraph may form multiple employer bargaining units in accordance with the provisions of this subdivision. Further, the organization representing trainers pursuant to subdivision (a) of Section 19613.2 shall conduct a meeting regarding the formulation of multiple

employer bargaining units within five days of the certification of the results of the election. For licensed trainers described in subparagraph (A) of paragraph (7), the minimum number of backstretch employees employed by licensed trainers comprising the multiple employer bargaining unit as of the date of the election shall be the lesser of 100 employees or 10 percent of the total employees subject to bargaining. For licensed trainers described in subparagraphs (B), (C), and (D), of paragraph (7), the minimum number of backstretch employees employed by licensed trainers comprising the multiple employer bargaining unit as of the date of the election shall be the lesser of 50 employees or 10 percent of the total employees subject to bargaining. The minimum number of backstretch employees employed by licensed trainers in order to qualify as a multiple employer bargaining unit pursuant to this subdivision may, with the consent of the recognized labor union, be reduced. On or before the 45th day following the certification of the results of the election, each representative of a multiple employer bargaining unit formed pursuant to this subdivision shall notify the board and the exclusive collective bargaining agent, in writing, that a unit has been formed, disclose the names of the licensed trainers which comprise the unit, and indicate the number and names of the backstretch employees which are employed by the licensed trainers comprising the unit. Except to join another multiple employer bargaining unit, without the consent of the bona fide labor organization, a trainer who has elected to join a multiple employer bargaining unit may not thereafter elect to resign from the unit except within a 30-day period prior to the date of the expiration of the collective bargaining agreement resulting from the negotiations. The employees of a licensed trainer who has resigned from a multiple employer bargaining unit and has not joined another unit, shall not be entitled to petition to decertify the union for a period of one year from the date of the expiration of the collective bargaining agreement which resulted from the negotiation between the union and the multiple employer bargaining unit of which he or she was formerly a member and which was in effect at the time of the trainer's resignation. Upon completion and certification of the election results the union shall be recognized as the exclusive collective bargaining agent for those workers whose employers are required to bargain, and the executive director of the board shall issue an order to affected employers to begin good faith negotiations for approval of employment agreements pursuant to the procedures set forth in this section.

(B) If an individual employer of backstretch workers declines to be represented in the multiemployer collective bargaining procedure described in clause (iii), the board shall issue an order to begin good faith negotiations for employment agreements on an individual employer basis. The board may provide mediation and conciliation services upon

request of the parties at any time. If an employer is required under this subparagraph to collectively bargain with the union, and the parties do not reach an agreement within 90 days of the order, the board shall require the parties to participate in mandatory mediation and conciliation services for a period of 30 days. If no agreement results from this mediation, either or both parties may declare an impasse. Upon a party's declaration of an impasse, the executive director of the board shall appoint an arbitrator in the manner described in paragraph (11) to determine the issues and issue a final and binding order establishing the terms of a collective bargaining agreement.

(9) No labor agreement under this article shall apply to any trainer or horseman with respect to employment associated with fair meetings prior to January 1, 2003. After this date, employees shall be added by accretion into an existing contract where applicable. For racing meetings conducted in the central and southern zones during the first three months of any calendar year and for fair racing meetings, this section shall not apply to trainers who normally reside and work outside of California and who are engaged in racing in this state for a limited period of time, not exceeding 90 racing days in any calendar year. For all other race meeting conducted during any calendar year, this section shall not apply to trainers, backstretch workers, or both who normally reside and work outside of California and without are engaged in racing in this state for a limited period of time, not exceeding 50 racing days in any calendar year.

(10) Except as provided in subparagraph (A) of paragraph (8), at any time subsequent to the expiration of an agreement under paragraph (8), when the agreement is not in effect, the board may recognize a majority interest, obtained during this period in the same manner as union recognition of employees, within a multiple employer bargaining unit who no longer desire to be represented by the union, and withdraw the recognition granted pursuant to this section from that union. An employer may inform his or her employees that a process for decertification exists and direct them to the board for information. However any card, signature, vote, or other indicator obtained for this purpose by means of coercion or threat or with the assistance or inducement of any employer shall be invalid.

(11) Disputes, other than disputes concerning the operation and application of ongoing contracts, disputes subject to binding interest arbitration pursuant to subparagraph (B) of paragraph (8), and economic disputes arising in the context of multiemployer bargaining pursuant to subparagraph (A) of paragraph (8), but including disputes concerning the rights established in paragraphs (1) and (2), upon complaint shall be adjudicated by the stewards. The stewards shall have the authority to order any remedy, including reinstatement of employment, injunctive

relief, damages, and attorney's fees. An investigation and adjudication by the stewards shall be concluded as expeditiously as possible, consistent with applicable standards of due process. In addition, the board may require the parties to submit the issue to binding arbitration subject to judicial review in the same manner as decisions of the board. Disputes subject to this paragraph include disputes involving any backstretch employee or group of employees, and any trainer or group of trainers.

(12) Upon submission of a complaint to binding arbitration under any provision of this article, the executive director of the board shall select an arbitrator from a panel of professional arbitrators with expertise in labor negotiations selected by the California State Mediation and Conciliation Service or from a panel identified in collective bargaining agreements between labor organizations and employers in the horse racing industry in California, or both. The arbitrators selected by the service or identified in collective bargaining agreements shall be available to resolve the matter expeditiously. The arbitrator selected by the executive director shall have the authority to convene an immediate hearing and require the parties to exercise all due diligence in promptly attending to the issue in controversy. In all matters pertaining to the rights established by this article, an arbitrator shall have the authority to fashion an appropriate remedy, including reinstatement of employment, injunctive relief, damages, and attorney's fees, and issuance of a make-whole remedy in the event of a persistent failure of a party to bargain in good faith. The board may take any administrative action within its authority to ensure compliance with decisions of arbitrators authorized by this section. Either party may also bring an action in state court to compel a party to go into arbitration or to enforce the decision of an arbitrator. Costs of arbitration shall be shared equally by the parties, and any party shall be entitled to recover any reasonable fees or costs incurred in securing compliance with or enforcement of an award or order of the arbitrator.

(e) Nothing in this section shall prevent a labor union and an individual trainer, or any group of trainers, from entering into a mutually acceptable agreement, which may substitute for the requirements of subdivision (d), for union organizing of employees of the horsemen or trainers. Nothing in this article shall be interpreted to require representative parties in negotiation to enter into any labor agreement, as long as each party is negotiating in a good faith effort to reach an agreement.

SEC. 2. Section 19481.5 of the Business and Professions Code, as added by Chapter 198 of the Statutes of 2001, is amended to read:

19481.5. (a) Notwithstanding any other provision of law, no license shall be issued to conduct a horse racing meeting upon a track

unless the track has been inspected by the board within 30 days prior to the date of application for a license and the track has been approved by the board as conforming to the racetrack safety standards set forth in subdivision (a) of Section 19481.

(b) The board shall, within 120 days of the effective date of this subdivision, 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 establish standards governing the employee housing provided to backstretch personnel at licensed racetracks. These regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, shall be commensurate with the housing standards established in the Employee Housing Act (commencing with Section 17000 of Division 13 of the Health and Safety Code), and shall consider the following:

(1) The health and safety of the human and equine population and the necessity for humans and horses to live in close proximity.

(2) The housing needs of state or county facilities with live racing meeting of no more than 43 days in duration that do not operate as year-round training facilities. The board shall specifically consider the different needs of these facilities compared to permanent facilities or other state and county facilities that function on a year-round basis, including state and county fair facilities that operate as a year-round training facilities where horses are stabled and workers live.

(3) Compliance of facilities with racing meetings of 19 days or less, even if they operate as a year-round training facility, with this subdivision shall be contingent on funding in the 2002–03 Budget Act.

These emergency regulations shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and shall be replaced by final, permanent regulations within 18 months of their adoption. Every racing association shall be in compliance with these housing standards by January 1, 2004.

(c) Commencing January 1, 2004, the board, with assistance from the California Department of Housing and Community Development or a local building department or other local entity designated by the jurisdiction in which the racetrack is located, shall annually inspect the living conditions of backstretch employee housing to ensure compliance with the housing standards established by the board, the findings or results of which shall be submitted to the board. No license shall be issued to a racing association to conduct a horse race meeting unless the board has inspected the housing conditions that exist on the racetrack's backstretch and determined the living conditions to be in compliance with the standards established by the board in subdivision (b).

(d) The board may assess a reasonable fee upon racing associations to defray the costs associated with the inspections provided for in subdivision (c).

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## CHAPTER 784

An act to amend Sections 30070 and 31499.17 of, and to add Sections 31621.9 and 53216.2 to, the Government Code, relating to county employee funding, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 30070 of the Government Code is amended to read:

30070. (a) The sum of eighteen million five hundred thousand dollars ($18,500,000) is hereby annually appropriated from the General Fund to the Controller for allocation to county sheriffs' departments to enhance law enforcement efforts in the counties specified in paragraphs (1) to (37), inclusive, according to the following schedule:

| | |
|---|---|
| (1) Alpine County | 500,000 |
| (2) Amador County | 500,000 |
| (3) Butte County | 500,000 |
| (4) Calaveras County | 500,000 |
| (5) Colusa County | 500,000 |
| (6) Del Norte County | 500,000 |
| (7) El Dorado County | 500,000 |
| (8) Glenn County | 500,000 |
| (9) Humboldt County | 500,000 |
| (10) Imperial County | 500,000 |
| (11) Inyo County | 500,000 |
| (12) Kings County | 500,000 |
| (13) Lake County | 500,000 |
| (14) Lassen County | 500,000 |
| (15) Madera County | 500,000 |
| (16) Marin County | 500,000 |
| (17) Mariposa County | 500,000 |

| | |
|---|---|
| (18) Mendocino County | 500,000 |
| (19) Merced County | 500,000 |
| (20) Modoc County | 500,000 |
| (21) Mono County | 500,000 |
| (22) Napa County | 500,000 |
| (23) Nevada County | 500,000 |
| (24) Placer County | 500,000 |
| (25) Plumas County | 500,000 |
| (26) San Benito County | 500,000 |
| (27) San Luis Obispo County | 500,000 |
| (28) Santa Cruz County | 500,000 |
| (29) Shasta County | 500,000 |
| (30) Sierra County | 500,000 |
| (31) Siskiyou County | 500,000 |
| (32) Sutter County | 500,000 |
| (33) Tehama County | 500,000 |
| (34) Trinity County | 500,000 |
| (35) Tuolumne County | 500,000 |
| (36) Yolo County | 500,000 |
| (37) Yuba County | 500,000 |

(b) Funds allocated pursuant to this section, until July 1, 2002, shall be used to supplement rather than supplant existing law enforcement resources.

SEC. 1.5. Section 31499.17 of the Government Code is amended to read:

31499.17. (a) General members may, within 180 days of the effective date of this article, elect to transfer to the retirement plan created by this article upon proper application executed by the member and filed with the board.

(b) The retirement benefits of the transferred members are governed and defined by this article.

(c) Transferring members relinquish and waive any and all previously available vested or accrued retirement, survivor, disability and death benefits. All transferring members whose contributions for public service have been refunded to them shall not receive credit for that service.

(d) Any member who selects Retirement Plan 3 upon reentering into county service and who has not received credit as a Plan 3 member for previous county service, may elect to repurchase his or her previous service by redepositing his or her withdrawn contributions, plus interest,

from date of termination, and shall then receive credit for that service under the plan status at the time of original employment.

(e) Any member who has elected or transferred to the plan created by this article and who terminates his or her employment and is later reemployed shall not be entitled to change his or her election upon that reemployment, unless a resolution, enacted by the board of supervisors subsequent to the member's election to transfer to the new plan, so provides.

(f) A plan transfer by a member is voluntary and shall be irrevocable, unless the board of supervisors, by resolution, authorizes Retirement Plan 3 members to transfer to a retirement plan authorized under Article 8 (commencing with Section 31670), under the terms and conditions specified in the resolution. The terms may include, but are not limited to, (1) an eligibility provision based on the number of years in county service, or (2) a provision for crediting service in the plan which (A) the member transfers to only for that service rendered after adoption of the resolution or (B) an eligibility provision that, for the purposes of Article 10 (commencing with Section 31720), considers years in county service from the date the member transfers to a new plan unless the prior county service credit is restored, or both. The resolution may establish different service credit conditions for various job classifications or groups, or for various represented bargaining units, different conditions agreed upon by the employer and the employee representative, or both. The board of supervisors may also establish other conditions it deems necessary or desirable.

SEC. 2. Section 31621.9 is added to the Government Code, to read:

31621.9. In counties adopting Section 31676.14, the normal rates of contribution, except for members covered by Article 6.8 (commencing with Section 31639), shall be that which will provide an average annuity at age 55 equal to $^{1}/_{120}$ of the final compensation of members not covered by Article 6.8 (commencing with Section 31639), according to the tables adopted by the board of supervisors, for each year of service rendered after entering the system.

This section may be made applicable in counties on the first day of the month after the board of supervisors of the county adopts, by majority vote, a resolution adopting this section.

This section shall apply only to a county of the 20th class, as provided by Sections 28020 and 28041.

SEC. 3. Section 53216.2 is added to the Government Code, to read:

53216.2. A county that has established a pension trust pursuant to this article may contract with the courts within the county, and with other local agencies within the county, to permit the officers and employees of those courts and local agencies to participate in any plan under the county's pension trust. The contracting court or local agency shall

determine whether to make participation in the plan optional or compulsory for its officers and employees, as provided in Section 53216.

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

In order to ensure that funds allocated to counties pursuant to an existing appropriation are utilized in the most effective manner, it is necessary that this act take effect immediately.

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## CHAPTER 785

An act to amend Section 20687 of, to add Section 21363.3 to, and to repeal Section 20687.1 of, the Government Code, relating to retirement.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 20687 of the Government Code is amended to read:

20687. (a) The normal rate of contribution for state peace officer/firefighter members subject to Section 21363, 21363.1, or 21363.3 shall be 8 percent of the compensation in excess of two hundred thirty-eight dollars ($238) per month paid to those members.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, those provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 2. Section 20687.1 of the Government Code is repealed.

SEC. 3. Section 21363.3 is added to the Government Code, to read:

21363.3. (a) The combined current and prior service pensions for state peace officer/firefighter members described in Section 20394 is a pension derived from the contributions of the employer sufficient when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of his or her retirement to equal 3 percent of his or her final compensation at the age

of 50 years, multiplied by the number of years of state peace officer/firefighter service subject to this section with which he or she is credited at retirement.

(b) In no event shall the current service pension and the combined current and prior service pensions under this section for all service to all employers exceed an amount that, when added to the service retirement annuity related to that service, equals 90 percent of final compensation. If the pension relates to service to more than one employer and would otherwise exceed that maximum, the pension payable with respect to each employer shall be reduced in the same proportion as the allowance based on service to that employer bears to the total allowance computed as though there were no limit, so that the total of the pensions shall equal the maximum. Where a state peace officer/firefighter member has service under this section, or other safety retirement formulas pursuant to this part with state or local agency employers, the higher maximum shall apply and the additional benefit shall be funded by increasing the member's pension payable with respect to the state employer.

(c) This section shall apply to state peace officer/firefighter members described in Section 20394 if authorized by, and in accordance with, a memorandum of understanding reached between the Trustees of the California State University and the recognized employee organization pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1. This section may also apply to sworn peace officer/firefighter members described in Section 20394 in related management positions, if the Trustees of the California State University have approved the application in writing to the Board of Administration of the Public Employees' Retirement System.

(d) This section shall supersede Section 21363.1 with respect to peace officer/firefighter service for members employed by the California State University police department on or after the date a memorandum of understanding, or action by the Trustees of the California State University regarding related management positions, makes this section applicable to these members.

(e) This section may not prevent a subsequent memorandum of understanding, or subsequent action by the Trustees of the California State University regarding related management positions, from making this section inapplicable to peace officer/firefighter members first employed by the California State University police department on or after a date specified in a subsequent memorandum of understanding, or subsequent action by the Trustees of the California State University regarding related management positions.

CHAPTER 786

An act to add Section 2266 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 2266 is added to the Vehicle Code, to read:

2266. (a) The Legislature finds and declares all of the following:

(1) The communications operators of the Department of the California Highway Patrol are among the lowest paid when compared to operators employed by other law enforcement agencies in the state. The department's communication centers suffer from significant staff shortages and high turnover rates. Increasing the wages paid to these communications operators will increase their professionalism while reducing their rate of turnover.

(2) The recruitment and retention problem is especially evident in the classifications of Communications Operator I and II.

(3) In order for the state to recruit and retain the highest qualified and capable communications operators, those employees should be compensated in an amount equal to the estimated average total compensation for the classifications corresponding to Communications Operator I and II within the police departments in the Cities of Los Angeles, Oakland, San Diego, and San Jose and the City and County of San Francisco.

(4) According to the Department of the California Highway Patrol, it costs the department thirty-six thousand one hundred ninety-eight dollars ($36,198) to train a Communications Operator I and sixty-five thousand two hundred two dollars ($65,202) to train a Communications Operator II to their respective classifications. After the department has trained an operator, all too often the new, fully trained operator will move to a local agency to a higher wage.

(5) This section is not in violation of the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code), which requires that changes for salaries and benefits be collectively bargained between representatives of the state and the employee's union. This section does not circumvent that process. This section simply authorizes the Department of Personnel Administration, when determining compensation for communications operators in the Department of the California Highway Patrol, to consider the total compensation for communications operators in other jurisdictions.

(b) When determining compensation for communications operators in the Department of the California Highway Patrol, the Department of

Personnel Administration may consider the total compensation for communications operators in comparable positions in the police departments specified in paragraph (3) of subdivision (a).

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## CHAPTER 787

An act to amend Section 20441 of, to add Section 20423.5 to, and to repeal Section 20441.5 of, the Government Code, relating to public employee's retirement, and making an appropriation therefor.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 20423.5 is added to the Government Code, to read:

20423.5. ''Local safety member'' also includes any park ranger employed by a contracting agency who is a peace officer as defined in subdivision (b) of Section 830.31 of the Penal Code and whose primary responsibility is maintaining the peace and whose duties include law enforcement, emergency medical care first response, or fire suppression and prevention.

This section shall not apply to any contracting agency nor to the employees of a contracting agency until the agency elects to be subject to this section by amendment to is contract with the board pursuant to Section 20474, or by express provision within its contract with the board.

SEC. 2. Section 20441 of the Government Code is amended to read:

20441. ''County peace officer'' shall also include persons employed by a county parks and recreation department whose primary responsibility is maintaining the peace and whose duties include law enforcement, emergency medical care first response, or fire suppression and prevention in the Park Ranger class series.

This section shall not apply to the employees of any contracting agency nor to any agency unless and until the contracting agency elects to be subject to the provisions of this section by amendment to its contract with the board, made as provided in Section 20474 or by express provision in its contract with the board.

SEC. 3. Section 20441.5 of the Government Code is repealed.

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## CHAPTER 788

An act to add Section 3502.1 to the Government Code, relating to public employees.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 3502.1 is added to the Government Code, to read:

3502.1. No public employee shall be subject to punitive action or denied promotion, or threatened with any such treatment, for the exercise of lawful action as an elected, appointed, or recognized representative of any employee bargaining unit.

SEC. 2. The Legislature finds and declares that the provisions of this act are declaratory of existing law.

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## CHAPTER 789

An act to add Section 34501.18 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 34501.18 is added to the Vehicle Code, to read:

34501.18. (a) Every motor carrier regularly employing more than 20 full-time drivers shall report to the department whenever it replaces more than half of its drivers within a 30-day period. Within 21 days of receipt of that report, the department shall inspect the motor carrier to ensure that the motor carrier is complying with all safety of operations requirements, including, but not limited to, controlled substances testing and hours-of-service regulations. The reporting requirement of this subdivision does not apply to a motor carrier who, through normal seasonal fluctuations in the business operations of the carrier, or through termination of a contract for transportation services, other than a collective bargaining agreement, replaces drivers in one geographical location with drivers in another geographical location.

(b) For the purposes of subdivision (a), ''employing'' means having an employer-employee relationship with a driver or contracting with an owner-operator, as described in Section 34624, to provide transportation services for more than 30 days within the previous year.

(c) For the purposes of subdivision (a), ''full-time'' means that the driver is on-duty with the motor carrier for an average of 30 hours or more per week during the course of his or her employment or contract with the motor carrier.

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.

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## CHAPTER 790

An act to amend Section 3507.1 of the Government Code, relating to public employment.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 3507.1 of the Government Code is amended to read:

3507.1. (a) Unit determinations and representation elections shall be determined and processed in accordance with rules adopted by a public agency in accordance with this chapter. In a representation election, a majority of the votes cast by the employees in the appropriate bargaining unit shall be required.

(b) Notwithstanding subdivision (a) and rules adopted by a public agency pursuant to Section 3507, a bargaining unit in effect as of the effective date of this section shall continue in effect unless changed under the rules adopted by a public agency pursuant to Section 3507.

(c) A public agency shall grant exclusive or majority recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit desire the representation, unless another labor organization has previously been lawfully

recognized as exclusive or majority representative of all or part of the same unit. Exclusive or majority representation shall be determined by a neutral third party selected by the public agency and the employee organization who shall review the signed petition, authorization cards, or union membership cards to verify the exclusive or majority status of the employee organization. In the event the public agency and the employee organization cannot agree on a neutral third party, the Division of Conciliation of the Department of Industrial Relations shall be the neutral third party and shall verify the exclusive or majority status of the employee organization. In the event that the neutral third party determines, based on a signed petition, authorization cards, or union membership cards, that a second labor organization has the support of at least 30 percent of the employees in the unit in which recognition is sought, the neutral third party shall order an election to establish which labor organization, if any, has majority status.

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## CHAPTER 791

An act to amend Section 4850 of the Labor Code, relating to public employee benefits.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 4850 of the Labor Code is amended to read:

4850. (a) Whenever any person listed in subdivision (b) who is a member of the Public Employees' Retirement System or the Los Angeles City Employees' Retirement System or subject to the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code), is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, which would be payable under this chapter, for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.

(b) The persons eligible under subdivision (a) include all of the following:

(1) City police officers.

(2) City, county, or district firefighters.

(3) Sheriffs.

(4) Officers or employees of any sheriff's offices.

(5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office.

(6) County probation officers, group counselors, or juvenile services officers.

(7) Officers or employees of a probation office.

(8) Peace officers under Section 830.31 of the Penal Code employed on a regular, full-time basis by a county of the first class.

(9) Lifeguards employed year round on a regular, full-time basis by a county of the first class.

(10) Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code.

(11) Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code.

(12) Police officers of the Los Angeles Unified School District.

(c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a) and does not include any of the following:

(1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service.

(2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service.

(4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

(d) If the employer is insured, the payments which, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or by a city, county, or district firefighter, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

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## CHAPTER 792

An act to amend Section 138.7 of the Labor Code, relating to employment.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 138.7 of the Labor Code is amended to read:

138.7. (a) Except as expressly permitted in subdivision (b), a person or public or private entity not a party to a claim for workers' compensation benefits may not obtain individually identifiable information obtained or maintained by the division on that claim. For purposes of this section, ''individually identifiable information'' means any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity.

(b) (1) The administrative director, or a statistical agent designated by the administrative director, may use individually identifiable information for purposes of creating and maintaining the workers' compensation information system as specified in Section 138.6.

(2) The State Department of Health Services may use individually identifiable information for purposes of establishing and maintaining a program on occupational health and occupational disease prevention as specified in Section 105175 of the Health and Safety Code.

(3) (A) Individually identifiable information may be used by the Division of Workers' Compensation, the Division of Occupational Safety and Health, and the Division of Labor Statistics and Research as necessary to carry out their duties. The administrative director shall adopt regulations governing the access to the information described in

this subdivision by these divisions. Any regulations adopted pursuant to this subdivision shall set forth the specific uses for which this information may be obtained.

(B) Individually identifiable information maintained in the workers' compensation information system and the Division of Workers' Compensation may be used by researchers employed by or under contract to the Commission on Health and Safety and Workers' Compensation as necessary to carry out the commission's research. The administrative director shall adopt regulations governing the access to the information described in this subdivision by commission researchers. These regulations shall set forth the specific uses for which this information may be obtained and include provisions guaranteeing the confidentiality of individually identifiable information. Individually identifiable information obtained under this subdivision shall not be disclosed to commission members. No individually identifiable information obtained by researchers under contract to the commission pursuant to this subparagraph may be disclosed to any other person or entity, public or private, for a use other than that research project for which the information was obtained. Within a reasonable period of time after the research for which the information was obtained has been completed, the data collected shall be modified in a manner so that the subjects cannot be identified, directly or through identifiers linked to the subjects.

(4) The administrative director shall adopt regulations allowing reasonable access to individually identifiable information by other persons or public or private entities for the purpose of bona fide statistical research. This research shall not divulge individually identifiable information concerning a particular employee, employer, claims administrator, or any other person or entity. The regulations adopted pursuant to this paragraph shall include provisions guaranteeing the confidentiality of individually identifiable information. Within a reasonable period of time after the research for which the information was obtained has been completed, the data collected shall be modified in a manner so that the subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) This section shall not operate to exempt from disclosure any information that is considered to be a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) contained in an individual's file once an application for adjudication has been filed pursuant to Section 5501.5.

However, individually identifiable information shall not be provided to any person or public or private entity who is not a party to the claim unless that person identifies himself or herself or that public or private

entity identifies itself and states the reason for making the request. The administrative director may require the person or public or private entity making the request to produce information to verify that the name and address of the requester is valid and correct. If the purpose of the request is related to preemployment screening, the administrative director shall notify the person about whom the information is requested that the information was provided and shall include the following in 12-point type:

"IT MAY BE A VIOLATION OF FEDERAL AND STATE LAW TO DISCRIMINATE AGAINST A JOB APPLICANT BECAUSE THE APPLICANT HAS FILED A CLAIM FOR WORKERS' COMPENSATION BENEFITS."

Any residence address is confidential and shall not be disclosed to any person or public or private entity except to a party to the claim, a law enforcement agency, an office of a district attorney, any person for a journalistic purpose, or other governmental agency.

Nothing in this paragraph shall be construed to prohibit the use of individually identifiable information for purposes of identifying bona fide lien claimants.

(c) Except as provided in subdivision (b), individually identifiable information obtained by the division is privileged and is not subject to subpoena in a civil proceeding unless, after reasonable notice to the division and a hearing, a court determines that the public interest and the intent of this section will not be jeopardized by disclosure of the information. This section shall not operate to restrict access to information by any law enforcement agency or district attorney's office or to limit admissibility of that information in a criminal proceeding.

(d) It shall be unlawful for any person who has received individually identifiable information from the division pursuant to this section to provide that information to any person who is not entitled to it under this section.

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## CHAPTER 793

An act to amend Sections 3562.2, 20057.1, 20070, 20356, 20433, 20434, 20434.5, 20481, 20515, 20580, 20588, 20686, 21024, 21027, 21054, 21259, 21298, 21317, 21318, 21319, 21322, 21325, 21326, 21327, 21328, 21547.7, 21751, 21757, 21758, 21761, 21764, 22819, 22821.1, 22857, and 31657 of, to add Sections 20890.1, 21461.5, and 22013.98 to, and to repeal Sections 20687.1, 21001, and 21002 of, the Government Code, relating to public employee benefits.

[Approved by Governor October 12, 2001. Filed with
Secretary of State October 13, 2001.]

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

SECTION 1. Section 3562.2 of the Government Code is amended to read:

3562.2. Notwithstanding subdivision (r) of Section 3562, for purposes of the California State University only, ''scope of representation'' also means any retirement benefits available to a state member under Part 3 (commencing with Section 20000) of Title 2.

SEC. 2. Section 20057.1 of the Government Code is amended to read:

20057.1. To qualify as a ''public agency'' within the meaning of this part, any organization that qualifies under amendments to the definitions of ''public agency'' effective on or after January 1, 2002, shall also obtain 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 Sections 1001 et seq. of Title 29 of the United States Code.

SEC. 3. Section 20070 of the Government Code is amended to read:

20070. ''1959 survivor allowance'' means the allowance provided for in Sections 21571, 21572, 21573, 21574, 21574.5, and 21574.7.

SEC. 4. Section 20356 of the Government Code is amended to read:

20356. Whenever in this part the rights of a local member, because of membership in another retirement system, are conditioned upon employment within six months of termination of membership in this system or another retirement system, the period shall be one year rather than six months if the local member was an elective officer and becomes a member of another retirement system upon commencement of service in another elective office on and after January 1, 1977.

This section shall not apply unless the other employer in a reciprocal system elected a similar provision, nor shall it apply to any contracting agency nor to the employees of any contracting agency unless that agency elected to be subject to the provisions of this section in its contract with the board on or before December 31, 2001.

SEC. 5. Section 20433 of the Government Code is amended to read:

20433. ''Local firefighter'' means any officer or employee of a fire department of a contracting agency, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active firefighting, or active firefighting and prevention service, active firefighting and fire training, active firefighting and hazardous materials, active firefighting and fire or arson investigation,

or active firefighting and emergency medical services, even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active firefighting, or active firefighting and prevention service, active firefighting and fire training, active firefighting and hazardous materials, active firefighting and fire or arson investigation, or active firefighting and emergency medical services, but not excepting persons employed and qualifying as firefighters or equal or higher rank, irrespective of the duties to which they are assigned.

SEC. 6. Section 20434 of the Government Code is amended to read:

20434. ''Local firefighter'' also means any officer or employee of a fire department of a contracting agency, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise and whose functions do not clearly fall within the scope of active firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation service, even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active firefighting, fire prevention, fire training, hazardous materials, emergency medical services, or fire or arson investigation service, but not excepting persons employed and qualifying as firefighters or equal or higher rank, irrespective of the duties to which they are assigned.

This section shall not apply to the employees of any contracting agency nor to any contracting agency until the agency elects to be subject to this section by amendment to its contract with the board, made pursuant to Section 20474 or by express provision in its contract with the board.

SEC. 7. Section 20434.5 of the Government Code is amended to read:

20434.5. ''Local firefighter'' also means any officer or employee of a fire department of a contracting agency, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of hazardous materials services, even though that employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of hazardous materials services, but not excepting persons employed and qualifying as firefighters or equal or higher rank, irrespective of the duties to which they are assigned.

This section shall not apply to the employees of any contracting agency nor to any contracting agency unless and until the contracting agency elects to be subject to this section by amendment to its contract with the board, made pursuant to Section 20474 or by express provision in its contract with the board.

SEC. 8. Section 20481 of the Government Code is amended to read:

20481. All members of a local system included by contract in this system thereupon become subject to this part and cease to be members of the local system. Payments being made to persons who have retired or their survivors or beneficiaries under the local system on the effective date of the contract, or any subsequent amendment thereto, shall be continued and paid by this system at the rates existing on that date under the local system unless the agency elects in its contract or by amendment thereto to provide a recalculation of retirement allowances for persons retired under the local system on the basis of the provisions of the contract. The liability for those payments shall be included in the computation of the prior service liability of the contracting agency. All members of the local system who are members under provisions continuing membership after termination of service shall be deemed members of this system under Section 20731 with credit in this system for all of the service with regard to which membership was continued under the local system.

SEC. 9. Section 20515 of the Government Code is amended to read:

20515. (a) A contracting agency that has included this section in its contract with the board, by express provision or by amendment, on or before December 31, 2001, may provide that, notwithstanding any other provision of this part, service that was in fact also covered under the federal system shall not be deemed as service that was also covered under the federal system, for all purposes of this part, except for the benefits provided by Article 3 (commencing with Section 21570) of Chapter 14. The amendment shall only be applicable to persons who are employed on and after the effective date of the amendment.

(b) The amendment made to this section by Chapter 636 of the Statutes of 1994 shall apply only to a contracting agency that includes this section in its contract on and after January 1, 1995, and on or before December 31, 2001.

SEC. 10. Section 20580 of the Government Code is amended to read:

20580. Upon the termination of a contract, all memberships in this system existing because of that contract continue in existence to the extent that there are accumulated contributions to the credit of each local member, but any member may elect to withdraw his or her accumulated contributions if the member is not employed in a position subject to coverage by the system at the time of election. The status of any member who does not withdraw his or her accumulated contributions shall be the same as if the public agency had continued as a contracting agency. The membership of any member who is eligible and who elects to withdraw his or her accumulated contributions shall be terminated forthwith, and he or she shall not be entitled to any further benefit based upon service credited as an employee of the contracting agency, nor shall he or she

have the right to redeposit those withdrawn contributions upon again becoming a member of this system. The portion of the contributions of the contracting agency held under Section 20576 to the credit of each member shall be determined by the board, and may be adjusted from time to time prior to termination of membership. A member whose membership continues under this section is subject to the same age and incapacity requirements as apply to other members for service or for disability retirement, but he or she is not subject to a minimum service requirement. Except as provided in Section 20578, he or she shall receive the retirement benefits as his or her accumulated contributions, together with the portion of the excess of the contributions of the contracting agency as are credited to him or her, shall provide, as determined by the board, but the provisions of this part relative to minimum retirement allowances shall not apply to him or her, nor shall those benefits exceed the benefits provided by the contract prior to its termination. Upon the death of a member, the basic death benefit shall be his or her accumulated contributions.

SEC. 11. Section 20588 of the Government Code is amended to read:

20588. Notwithstanding any other provision of this article, the board may, pursuant to this section and Section 31657, enter into an agreement with the board of retirement of a county maintaining a county retirement system, for termination of participation of a public agency whose contract has been in effect for at least five years in this system or the state with respect to certain safety members who have ceased to be employed by the public agency or the state and have been employed by a county, fire authority, or district as a result of a transfer of firefighting or law enforcement functions from the public agency or the state to the county, fire authority, or district and inclusion of the former public agency employees in that county retirement system. The agreement shall contain provisions the board finds necessary to protect the interests of this system for determination of the amount, time, manner of transfer of cash or the securities, or both, to be transferred to the county system as representing the actuarial value of the interests in the retirement fund of the public agency or the state and the transferred employees by reason of accumulated contributions credited to that public agency or the state and the employees transferred. The agreement shall apply only to employees who are employed by the county or district on the effective date of the agreement. All liability of this system with respect to the members transferred under that agreement shall cease and shall become the liability of the county retirement system as of the date of transfer specified in the agreement. Liability of the county retirement system shall be for payment of benefits to transferred employees in accordance with Chapter 3 (commencing with Section 31450) of Part 3 of Division

4 of Title 3. Any member transferred who becomes a member of a county retirement system upon that transfer date shall be subject to provisions of this part and of Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 extending rights to a member or subjecting him or her to limitations because of membership in another retirement system to the same extent that he or she would have been had he or she been a member of the county retirement system during his or her membership in this system.

This section shall apply only in Kern, Los Angeles, and Orange Counties.

SEC. 12. Section 20686 of the Government Code is amended to read:

20686. For each state safety member defined in Section 20401 and whose current and prior service pensions shall be computed pursuant to Section 21373, the normal rate of contribution shall be 8 percent and shall be made only on the compensation in excess of two hundred thirty-eight dollars ($238) per month. The Legislature reserves the right to increase the rate of contribution as it may find appropriate from time to time. No adjustment shall be included in rates adopted under this section as the result of amendments hereto, changing the time at which members may retire or the benefits members shall receive, because of time during which members have contributed at different rates prior to that adoption.

SEC. 13. Section 20687.1 of the Government Code is repealed.

SEC. 14. Section 20890.1 is added to the Government Code, to read:

20890.1. Past county peace officer service shall be converted to local sheriff service if all of the following apply to the past service:

(a) It was rendered in a position that has subsequently been reclassified as a local sheriff position according to the provisions of Section 20432.

(b) It was rendered by a current employee of the same agency for which the county peace officer service was performed.

(c) It is credited to an employee who has other local sheriff service credit for service performed with the agency.

SEC. 15. Section 21001 of the Government Code is repealed.

SEC. 16. Section 21002 of the Government Code is repealed.

SEC. 17. Section 21024 of the Government Code is amended to read:

21024. (a) ''Public service'' with respect to a local member, other than a school member, also means active service with the Armed Forces or the Merchant Marine of the United States, including time during any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes, and for

six months thereafter prior to the member's first employment by the employer under this section in which he or she was a member.

(b) Any member electing to receive credit for that public service shall make the contributions as specified in Sections 21050 and 21052. However, any eligible member who requests costing of service credit between January 1, 2001, and December 31, 2003, may, instead of making those contributions, make the payment calculated under this article as it read on December 31, 2000, which payment shall be made in the manner described in Section 21050.

(c) The public service under this section shall not include military service (1) in any period for which credit is otherwise given under this article or Article 4 (commencing with Section 20990) or (2) to the extent that total credit under this section would exceed four years.

(d) Notwithstanding Section 21034, a member may select which of two or more periods of service entitles him or her to receive public service under this section.

(e) This section shall apply to a member only if he or she elects to receive credit while he or she is in state service in the employment of one employer on or after the date of the employer's election to be subject to this section.

(f) This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or in the case of contracts made after this section takes effect, by express provision in the contract making the contracting agency subject to this section. The amendments to this section made during the second year of the 1999–2000 Regular Session shall apply to contracts subject to this section on January 1, 2001.

SEC. 18. Section 21027 of the Government Code is amended to read:

21027. (a) ''Public service'' with respect to a local member who retired pursuant to this part before the effective date of the election of his or her employer to be subject to Section 21024 also means active service with the Armed Forces or the Merchant Marine of the United States, including time during any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes, and for six months thereafter prior to the person's first employment by the employer under this section in which he or she was a member.

(b) Any retired person electing to receive credit for that public service shall make the contributions as specified in Sections 21050 and 21052. However, any eligible member who requests costing of service credit between January 1, 2001, and December 31, 2003, may, instead of making those contributions, make the payment calculated under this

article as it read on December 31, 2000, which payment shall be made in the manner described in Section 21050.

(c) The public service shall not include military service (1) in any period for which credit is otherwise given under this article or Article 4 (commencing with Section 20990) or (2) to the extent that total credit under this section would exceed four years.

(d) Notwithstanding Section 21034, a retired person may select which of two or more periods of service entitles him or her to receive public service under this section.

(e) This section shall apply to a retired person only if he or she retired immediately following service as a local member, pursuant to this part, and before the effective date of the election by his or her employer to be subject to Section 21024.

(f) The retirement allowance of a retired person who elects to receive service credit pursuant to this section shall be increased only with respect to the allowance payable on and after the effective date of the election.

(g) This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency has elected to be subject to Section 21024 and elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or, in the case of contacts made after January 1, 1988, by express provision in the contract making the contracting agency subject to both Section 21024 and this section. The amendments to this section made during the second year of the 1999–2000 Regular Session shall apply to contracts subject to this section on January 1, 2001.

SEC. 19. Section 21054 of the Government Code is amended to read:

21054. Notwithstanding any other provision of law, a member or retired member who elected to purchase military service credit under Section 21024 or 21027 on or after January 1, 1999, and prior to January 1, 2001, may, at any time prior to making the final payment for the service credit, elect to have the cost of that service credit recalculated pursuant to Section 21052. If that cost as recalculated under Section 21052 is less than the cost as originally calculated, the member or retired member shall pay the lesser amount, with credit for the payments previously made. However, no refund shall be payable to a member or retired member as a result of the recalculation of cost pursuant to this section.

SEC. 20. Section 21259 of the Government Code is amended to read:

21259. Subject to compliance with this part, after a member has qualified as to service and disability for retirement for disability, or as to age and service for retirement for service, nothing shall deprive him or her of the right to a retirement allowance as determined under this part.

SEC. 21. Section 21298 of the Government Code is amended to read:

21298. (a) A nonmember entitled to receive a retirement allowance shall receive a retirement allowance based on the service retirement formula applicable to the service credited to the nonmember.

(b) The retirement allowance shall consist of a pension and an annuity, the latter of which shall be derived from the nonmember's accumulated contributions. The nonmember's retirement allowance, based upon the service credited by the employer and the nonmember's effective date of retirement, shall be subject to all cost-of-living increases, ad hoc increases, and increases provided by Section 21337 or 21337.1.

(c) If, prior to the nonmember's retirement, there is any increase in the service retirement formula that applies to service credited to the nonmember, that increase shall apply to the applicable service credited to the nonmember, provided that the same increase also applies to the applicable service credited to the member from whose account the nonmember's service was derived.

SEC. 22. Section 21317 of the Government Code is amended to read:

21317. (a) In addition to the increase of allowance authorized by and granted pursuant to Section 21313 and notwithstanding the limitation in subdivision (b) of Section 21329, any monthly allowance computed under or limited by any section other than Section 21362, as amended by Chapter 96 of the Statutes of 1971, and paid with respect to a local safety member whose retirement for service or nonindustrial death before retirement occurred prior to the date the contracting agency elected to be subject to Section 21362 as so amended, shall be increased by 15 percent. The percentage shall be applied to the allowance payable on the date this section becomes applicable to the contracting agency and the allowance as so increased shall be paid for time on and after that date and until the first day of April immediately following the date of application. The base allowance shall be increased by the same percentage for annual adjustments beginning with the adjustment effective for time commencing with that annual adjustment.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under the system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation. The additional contribution rate required at the time this section is added to a contract shall not be less than the sum of (1) the actuarial normal cost

and (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from the date this section becomes effective in the contracting agency's contract.

(d) This section shall not apply to any contracting agency nor to the employees of any contracting agency unless that agency elected to be subject to the provisions of this section in its contract with the board on or before December 31, 2001.

SEC. 23. Section 21318 of the Government Code is amended to read:

21318. (a) In addition to the increase of allowance authorized by and granted pursuant to Section 21313 and notwithstanding the limitation in subdivision (b) of Section 21329, any monthly allowance computed under or limited by any section other than Section 21362, as amended by Chapter 96 of the Statutes of 1971, and paid with respect to a local safety member whose retirement for service or nonindustrial death before retirement occurred, or who was granted an industrial or nonindustrial disability retirement, prior to the date the contracting agency elected to be subject to Section 21362 as so amended, shall be increased by 15 percent. The percentage shall be applied to the allowance payable on the date this section becomes applicable to the contracting agency and the allowance as so increased shall be paid for time on and after that date and until the first day of April immediately following the date of application. The base allowance shall be increased by the same percentage for annual adjustments beginning with the adjustment effective for time commencing with that annual adjustment.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods that, in the aggregate, are reasonable and that, in combination, offer the actuary's best estimate of anticipated experience under this system.

(c) The additional employer contributions required under this section shall be computed as a level percentage of member compensation. The additional contribution rate required at the time this section is added to a contract shall not be less than the sum of (1) the actuarial normal cost and (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from the date this section becomes effective in the contracting agency's contract.

(d) This section shall not apply to any contracting agency nor to the employees of any contracting agency unless that agency elected to be subject to the provisions of this section in its contract with the board on or before December 31, 2001.

SEC. 24. Section 21319 of the Government Code is amended to read:

21319. (a) In addition to the increase of allowance authorized by and granted pursuant to Section 21313 and notwithstanding the limitation in subdivision (b) of Section 21329, any monthly allowance computed under or limited by a retirement formula applicable to local miscellaneous members who retired prior to July 1, 1971, or to local miscellaneous members who so retired and then were reinstated from retirement and retired again after July 1, 1971, and whose allowance is based upon such a formula and paid with respect to a local miscellaneous member whose retirement or whose initial retirement or death before retirement occurred prior to July 1, 1971, shall be increased by 15 percent. The percentage shall be applied to the allowance payable on the date this section becomes applicable to the contracting agency and the allowance as so increased shall be paid for time on and after that date and until the first day of April immediately following the date of the application. The base allowance shall be increased by the same percentage for annual adjustments beginning with the adjustment effective for time commencing with that annual adjustment.

(b) This section shall apply only to the portion of the allowance that is based on service in employment with the employer electing to be subject to this section.

(c) This section shall not apply to any contracting agency nor to the employees of any contracting agency unless that agency elected to be subject to the provisions of this section in its contract with the board on or before December 31, 2001.

SEC. 25. Section 21322 of the Government Code is amended to read:

21322. Section 21320 shall apply to any contracting agency that has included the provisions of that section in its contract with the board on or before December 31, 2001.

SEC. 26. Section 21325 of the Government Code is amended to read:

21325. (a) In addition to the increase in allowance authorized by and granted pursuant to the provisions of Section 21313, and notwithstanding the limitation on those increases imposed by this article, the monthly allowance paid with respect to a local member, other than a school member, who retired or died prior to January 1, 1974, shall be increased by the percentage set forth opposite the period in the following table during which retirement became effective or death occurred:

| Period during which retirement or death occurred: | Percentage: |
|---|---|
| On or before December 31, 1965 | 15% |
| 12 months ending December 31, 1966 | 14% |
| 12 months ending December 31, 1967 | 13% |
| 12 months ending December 31, 1968 | 12% |
| 12 months ending December 31, 1969 | 9% |
| 12 months ending December 31, 1970 | 6% |
| 12 months ending December 31, 1971 | 5% |
| 12 months ending December 31, 1972 | 4% |
| 12 months ending December 31, 1973 | 3% |

(b) The percentage shall be applied to the allowance payable on the date this section becomes applicable to the contracting agency, and the allowance as so increased shall be paid for time on and after that date and until the first day of April immediately following the date of application. The base allowance shall be the allowance as increased under this section. The base year for annual adjustments of allowances increased by this section shall be the calendar year preceding the year of increase if the increase date is after April 1st of any calendar year, and the second calendar year preceding the year of increase if the increase date is on or before April 1st of any calendar year.

(c) This section shall not apply to any contracting agency unless that agency elected to be subject to the provisions of this section in its contract with the board on or before December 31, 2001.

SEC. 27. Section 21326 of the Government Code is amended to read:

21326. (a) In addition to the increase in allowance authorized by and granted pursuant to the provisions of Section 21313, and notwithstanding the limitation on those increases imposed by this article, the monthly allowance paid with respect to a local member, other than a school member, who retired or died prior to July 1, 1974, shall be increased by the percentage set forth opposite the period in the following table during which retirement became effective or death occurred:

| Period during which retirement or death occurred: | Percentage: |
|---|---|
| On or before December 31, 1965 | 7% |
| 12 months ending December 31, 1966 | 6% |
| 12 months ending December 31, 1967 | 5% |
| 12 months ending December 31, 1968 | 4% |
| 12 months ending December 31, 1969 | 3% |

| | |
|---|---|
| 18 months ending June 30, 1971 . . . . . | 2% |
| 36 months ending June 30, 1974 . . . . . | 1% |

(b) The percentage shall be applied to the allowance payable on the date this section becomes applicable to the contracting agency, and the allowance as so increased shall be paid for time on and after that date and until the first day of April immediately following the date of application. The base allowance shall be the allowance as increased under this section. The base year for annual adjustments of allowances increased by this section shall be the calendar year preceding the year of increase if the increase date is after April 1st of any calendar year, and the second calendar year preceding the year of increase if the increase date is on or before April 1st of any calendar year.

(c) This section shall not apply to any contracting agency unless the agency elected to be subject to the provisions of this section in its contract with the board on or before December 31, 2001.

SEC. 28. Section 21327 of the Government Code is amended to read:

21327. In addition to the increase in allowance authorized and granted pursuant to provisions of Section 21313, and notwithstanding the limitation on those increases imposed by this article, effective January 1, 1980, or the date this section becomes applicable to the contracting agency, the monthly allowance paid with respect to a state or local member, other than a school member, who retired or died prior to January 1, 1975, shall be increased by the percentage set forth opposite the year of retirement or death in the following schedule:

| Period During Which Retirement or Death Occurred | Percentage |
|---|---|
| 12 months ending Dec. 31, 1967 . . . . . | 1.51 |
| 12 months ending Dec. 31, 1968 . . . . . | 1.26 |
| 12 months ending Dec. 31, 1969 . . . . . | 1.86 |
| 12 months ending Dec. 31, 1970 . . . . . | 2.55 |
| 6 months ending June 30, 1971 . . . . . | 1.91 |
| 6 months ending Dec. 31, 1971 . . . . . | 7.05 |
| 12 months ending Dec. 31, 1972 . . . . . | 6.76 |
| 12 months ending Dec. 31, 1973 . . . . . | 4.45 |
| 6 months ending June 30, 1974 . . . . . | 0.47 |
| 6 months ending Dec. 31, 1974 . . . . . | 1.31 |

The percentage shall be applied to the allowance payable on January 1, 1980, or the date this section becomes applicable to the contracting agency, and the allowance as so increased shall be paid for time on and

after the date and until the first day of April immediately following the date of application. The base allowance shall be the allowance as increased under this section. The base year for annual adjustments of allowances increased by this section shall be the calendar year preceding the year of increase if the increase date is after April 1st of any calendar year, and the second calendar year preceding the year of increase if the increase date is on or before April 1st of any calendar year.

This section shall not apply to any contracting agency unless the agency elected to be subject to the provisions of this section in its contract with the board on or before December 31, 2001.

SEC. 29. Section 21328 of the Government Code is amended to read:

21328. (a) In addition to the increase in allowance authorized and granted pursuant to Section 21313, and notwithstanding the limitation on that increase imposed by this article and subdivision (b) of Section 21337 or subdivision (a) of Section 21337.1, effective January 1, 2000, or the date this section becomes applicable to the contracting agency, the monthly allowance paid with respect to a state, local, or school member who retired or died prior to January 1, 2000, or the date this section becomes applicable to the contracting agency, other than an allowance provided by Article 3 (commencing with Section 21570) of Chapter 14, shall be increased by the percentage set forth opposite the year of retirement or death in the following schedule:

| Period during which retirement or death occurred: | Percentage: |
|---|---|
| 24 months ending Dec. 31, 1999 | 0.0% |
| 12 months ending Dec. 31, 1997 | 1.0% |
| 24 months ending Dec. 31, 1996 | 2.0% |
| 60 months ending Dec. 31, 1994 | 3.0% |
| 60 months ending Dec. 31, 1989 | 4.0% |
| 120 months ending Dec. 31, 1984 | 5.0% |
| 12 months ending Dec. 31, 1974 or earlier | 6.0% |

The percentage shall be applied to the allowance payable on January 1, 2000, or the date this section becomes applicable to the contracting agency, and the allowance as so increased shall be paid for time on and after that date and until the first day of April immediately following the date of application. The base allowance shall be the allowance as increased under this section. Notwithstanding Section 21337 or 21337.1 to the contrary, this increase shall not be included in determining the

initial monthly allowance upon which a supplemental benefit is payable pursuant to Section 21337 or 21337.1.

(b) This section shall not apply to any contracting agency unless and until the agency elects to be subject to its provisions by amendment to its contract, made in the manner prescribed for approval of contracts, or, in the case of contracts made after the effective date of this section, by an express provision in the contract making the contracting agency subject to the provisions of this section.

SEC. 30. Section 21461.5 is added to the Government Code, to read:

21461.5. (a) Notwithstanding Section 21461, a member retiring for service who became a member of the system on or after January 1, 2002, and who is covered under the federal system but is not yet receiving a retirement or disability benefit under that system, may elect to have the actuarial equivalent of his or her unmodified service retirement allowance paid in two parts as follows:

(1) A temporary annuity that shall not exceed the primary social security benefit that is anticipated the member shall be entitled to receive at social security retirement age, which age shall be designated by the member.

(2) A life income consisting of the member's service retirement annuity plus the pension provided by the actuarial value of the member's current and prior service pensions remaining after providing the temporary annuity in paragraph (1).

(b) The temporary annuity under paragraph (1) of subdivision (a) shall not be subject to further optional settlement under this article and shall be payable monthly as an addition to the member's monthly life income beginning on the member's effective date of retirement and continuing until the retired member attains the age designated by the member under subdivision (a). If the member dies prior to the designated age, the commuted value of any installments payable for the period remaining until the member would have attained that age shall be paid to the member's designated beneficiary in a lump sum.

SEC. 31. Section 21547.7 of the Government Code is amended to read:

21547.7. (a) Notwithstanding any other provision of this article requiring attainment of the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, upon the death of a local firefighter member while in the employ of an agency subject to this section on or after January 1, 2001, who is credited with 20 years or more of state service, the surviving spouse, or eligible children, if there is no eligible spouse, may receive a monthly allowance in lieu of the basic death benefit. The board shall notify the eligible survivor, as defined in Section 21546, of this

alternate death benefit. The board shall calculate the monthly allowance that shall be payable as follows:

(1) To the member's surviving spouse, an amount equal to the amount the member would have received if he or she had retired for service at the minimum retirement age on the date of death and had elected optional settlement 2 and Section 21459. The retirement allowance shall be calculated using all service earned by the member in this system.

(2) If the member made a specific beneficiary designation under Section 21490, the monthly allowance shall be based only on that portion of the amount the member would have received described in paragraph (1) that would have been derived from the nonmember spouse's community property interest in the member's contributions and service credit.

(3) If there is no surviving spouse or the spouse dies before all of the children of the deceased member attain the age of 18 years, to the surviving children, under the age of 18 years, collectively, an amount equal to one-half of, and derived from the same source as, the unmodified allowance the member would have received if he or she had retired for service at the minimum retirement age on the date of death. No child shall receive any allowance after marrying or attaining the age of 18 years. As used in this paragraph, ''surviving children'' includes a posthumously born child or children of the member. The retirement allowance shall be calculated using all service earned by the member in this system.

(4) The cost of the allowance paid pursuant to this subdivision shall be paid from the assets of the employer at the member's date of death. All member contributions made by the member to this system shall be transferred to the plan assets of the employer liable for the funding of this benefit.

(b) (1) Upon the death of a local firefighter member while in the employ of an agency subject to this section on or after January 1, 2001, who is credited with 20 years or more of state service and who has attained the minimum age for voluntary service retirement applicable to him or her in his or her last employment preceding death, the surviving spouse may elect to receive a monthly allowance that is equal to the amount that member would have received if the member had been retired from service on the date of death and had elected optional settlement 2 and Section 21459 in lieu of the basic death benefit. The retirement allowance shall be calculated using all service earned by the member in this system.

(2) If the member made a specific beneficiary designation under Section 21490, the monthly allowance shall be based only on that portion of the amount the member would have received described in paragraph (1) that would have been derived from the nonmember

spouse's community property interest in the member's contributions and service credit.

(3) If there is no surviving spouse or the spouse dies before all of the children of the deceased member attain the age of 18 years, the allowance shall continue to the surviving children, under the age of 18 years, collectively, in an amount equal to one-half of, and derived from the same source as, the unmodified allowance the member would have received if he or she had been retired from service on the date of death. No child shall receive any allowance after marrying or attaining the age of 18 years. As used in this paragraph, ''surviving children'' includes a posthumously born child or children of the member. The retirement allowance will be calculated using all service earned by the member in this system.

(4) The cost of the increase in service allowance paid pursuant to this subdivision shall be paid from the assets of the employer at the member's date of death.

(c) This section shall not apply to any contracting agency, nor to the employees of any contracting agency, unless and until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts, except that an election among the employees is not required.

SEC. 32. Section 21751 of the Government Code is amended to read:

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

''Participating agency'' means any public agency that meets the criteria for becoming a contracting agency in this system pursuant to Chapter 5 (commencing with Section 20460) of Part 3, but that has not elected to participate in this system as a contracting agency, and that elects to contract with the board to participate in the replacement benefit plan administered pursuant to this part by the board.

SEC. 33. Section 21757 of the Government Code is amended to read:

21757. (a) If the retirement benefits of any member or his or her survivors or beneficiaries payable pursuant to Part 3 (commencing with Section 20000) would be limited by Section 415 of Title 26 of the United States Code, the board shall adjust the payment of those benefits, including, but not limited to, cost-of-living adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits, or any combinations thereof, in order to maximize benefits within the limits of Section 415.

(b) The board shall establish a plan of replacement benefits for members and any survivors or beneficiaries whose retirement benefits

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

(c) The application of Section 415 to benefits provided under Part 3 (commencing with Section 20000) and this part shall not be taken into account for purposes of determining employers' or employees' contribution rates, until replacement benefits are implemented pursuant to Section 21758.

(d) Under no circumstances shall the replacement benefit plan result in increased benefit costs to an employer, member, or annuitant.

SEC. 34. Section 21758 of the Government Code is amended to read:

21758. (a) There is in the State Treasury a Replacement Benefit Custodial Fund, that shall be administered exclusively by the board, that is separate and apart from the retirement fund or any other retirement trust fund and that is, notwithstanding Section 13340, continuously appropriated, without regard to fiscal years, to the board to carry out the purposes of this part.

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

(c) The Replacement Benefit Custodial Fund shall also consist of employer contributions, in amounts equivalent to the benefits that are not paid from either the retirement fund or the retirement trust fund of a participating agency to annuitants because of the application of the payment limitations under Section 415 of Title 26 of the United States Code; and administrative costs assessed to and paid by members enrolled in the replacement benefit plan.

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

(1) The amount of benefits that will not be payable from the retirement fund, or the retirement trust fund of a participating agency, because of the payment limitations in Section 415.

(2) The amount by which an employer's contributions to the retirement fund, or the retirement fund of a participating agency shall be reduced, for annuitants whose benefit payments are limited by Section 415.

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

(f) If all sections of this part, except Section 21763 and this section, become inoperative, pursuant to Section 21763, and all acts required and authorized by Section 21763 have been fully performed, any remaining balance in a member's individual account in the Replacement Benefit Custodial Fund shall revert to, and become part of, the trust fund of the retirement system from which the member retired.

SEC. 35. Section 21761 of the Government Code is amended to read:

21761. The state, school employers, as defined in Section 20063, and all contracting agencies under this system shall be deemed to have elected to contract with the board for administration of the replacement benefit plan pursuant to this part. A participating agency may contract with the board for administration to participate in the replacement benefit plan administered by the board, as follows:

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

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

(c) A public agency that intends to contract under this section and become a participating agency shall do so only pursuant to the procedure set forth in Sections 20469 to 20471, inclusive.

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

(e) A contract entered into under this section may be amended pursuant to the procedure set forth in Section 20472.

SEC. 36. Section 21764 of the Government Code is amended to read:

21764. It is the sole intent of the Legislature, in enacting this part, to fully comply with the provisions of the Internal Revenue Code that apply to public retirement systems in order to maintain and ensure the federal income tax exempt status of the Public Employees' Retirement System, to elect the ''grandfather'' option in Section 415(b)(10) of Title 26 of the United States Code, and to provide, to the extent deemed reasonable, commensurate replacement benefits to affected members of this system and of other participating agencies that elect to contract with this system for the administration of a replacement benefits plan.

The Legislature finds and declares that all costs of local public agencies and local public retirement systems of complying with Section 415 of Title 26 of the United States Code are a federal mandate within the meaning of Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2, as construed in City of Sacramento v. State of California (50 Cal. 3d 51).

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

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

SEC. 37. Section 22013.98 is added to the Government Code, to read:

22013.98. For purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)):

(a) ''Fireman,'' as used in this part, also includes any employee of the City of Long Beach Fire Department employed in the Marine Safety Division to perform lifeguard services and whose principal duties consist of active protection, rescue, and rendition of aid or assistance to persons injured or imperiled at beaches, lakes, flood control systems, rivers, or other bodies of open water. ''Fireman'' also includes employees hired to perform duties under the titles of ''Superintendent of Marine Safety,'' ''Marine Safety Officer,'' ''Marine Safety Captain,'' ''Marine Safety Sergeant/Boat Operators,'' or any equivalent successor class, of which the principal duties are customarily performed by police

peace officers and include the maintenance of peace and order and the apprehension of law violators, and whose other duties are customarily performed by firemen, such as resuscitation work involving the use of special equipment.

(b) ''Fireman'' as used in this part, excludes persons employed on a seasonal basis or persons who perform clerical, maintenance activities, and others whose primary duties do not include active life guarding or life saving services as described in subdivision (a), even if those persons are occasionally called upon to perform life guarding or life saving services.

SEC. 38. Section 22819 of the Government Code is amended to read:

22819. Employees, annuitants, and their family members who become eligible on or after January 1, 1985, for Part A and Part B of Medicare shall not be enrolled in a basic health benefits plan. If the employee, annuitant, or their family member is enrolled in Part A and Part B of Medicare, he or she may enroll in a supplement to Medicare plan. This section shall not apply to employees and family members which are specifically excluded from enrollment in a supplement to Medicare plan by federal law or regulation.

SEC. 39. Section 22821.1 of the Government Code is amended to read:

22821.1. All family members of a deceased employee of a contracting agency who are eligible, but not enrolled, for coverage hereunder on the date of the employee's death shall be deemed to be annuitants under subdivision (e) of Section 22754 for the purpose of enrollment, pursuant to Section 22810, and continuing their enrollment hereunder.

With respect to those eligible family members who enroll, a contracting agency shall remit the amounts required under subdivision (2) of Section 22826 and Section 22831 as well as the total amount of premium required from employer and enrollees hereunder in accordance with regulations of the board. Enrollment of those annuitants shall be continuous as of the effective date of their enrollment specified in Section 22810 so long as they meet the eligibility requirements of subdivision (f) of Section 22754 and regulations pertinent thereto. Failure to timely pay the required premiums and costs shall terminate coverage without recourse to reenrollment, and the cancellation of coverage by an annuitant will be final without option to reenroll. The contracting agency may elect to require the family members to pay all or any part of the employer premium for the enrollment.

This section shall apply to a contracting agency only upon the filing with the board of a resolution of its governing board electing to be subject to this section.

SEC. 40. Section 22857 of the Government Code is amended to read:

22857. A contracting agency including a school district, county board of education, personnel commission of a school district, or a county superintendent of schools that has elected to be subject to this part:

(a) Shall by resolution establish the employer contribution for employees and the employer contribution for annuitants. The resolution shall be filed with the board and the contribution shall be effective at the time that is provided in board regulations.

(b) May, notwithstanding Section 22825, establish a lesser monthly employer contribution for annuitants than for employees, provided that the monthly contribution for annuitants shall be annually increased by an amount not less than 5 percent of the monthly employer contribution for employees, until the time that the employer contribution for annuitants equals the employer contribution paid for employees.

This subdivision shall only apply to agencies who first become subject to this part on or after January 1, 1986.

SEC. 41. Section 31657 of the Government Code is amended to read:

31657. Subject to Section 20588, whenever, as a result of the assumption by a county, fire authority, or district of firefighting or law enforcement functions performed by a public agency or the state subject to the Public Employees' Retirement Law, any person ceases to be employed by a public agency or the state and is employed by a county, fire authority, or district in which this chapter has become operative, that person shall become a member of the retirement system of a county immediately upon entering county service. That member of the county retirement system shall be entitled to service credit in the county retirement system for the service for which he or she was entitled to credit in the Public Employees' Retirement System at the time of cessation of employment by the public agency or the state, without necessity of payment of any additional contributions in respect to that service, when and if all of the following occur:

(a) The board of retirement receives certification from the Board of Administration of the Public Employees' Retirement System of the service with which the person was entitled to be credited by the Public Employees' Retirement System at the time of cessation of his or her public agency or state employment.

(b) There is paid into the county retirement fund of the county, an amount equal to the normal contributions of the person to the Public Employees' Retirement System, together with all interest credited thereto, which amount shall be credited to the individual account of the member in the county retirement system, and shall thereafter for all

purposes be deemed to be the member's contribution to the county retirement system with respect to the service so certified.

(c) There is paid to the retirement system of the county an amount equal to all contributions of the public agency or the state made to the Public Employees' Retirement System on account of service rendered by the person together with interest credited to the public agency or the state thereto.

(d) The board of retirement elects to apply this section as a prudent means of mitigating against potential adverse financial impact upon the county retirement system from the cost of disability retirements that may be applied for in the future by persons injured while being employed by the county, fire authority, or district after ceasing to be employed by a public agency or the state as a result of the assumption by a county, fire authority, or district of firefighting or law enforcement functions.

This section shall apply in a county of the first, the second, or the fourteenth class, as defined by Section 28020, as amended by Chapter 1204 of the Statutes of 1971, and Section 28022, as amended by Chapter 43 of the Statutes of 1961, and Section 28023, as amended by Chapter 1204 of the Statutes of 1971.

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## CHAPTER 794

An act to amend Section 42238.12 of the Education Code, relating to school finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 42238.12 of the Education Code is amended to read:

42238.12. (a) For the 1995–96 fiscal year and each fiscal year thereafter, the county superintendent of schools shall adjust the total revenue limit for each school district in the jurisdiction of the county superintendent of schools by the amount of increased or decreased employer contributions to the Public Employees' Retirement System resulting from the enactment of Chapter 330 of the Statutes of 1982, adjusted for any changes in those contributions resulting from subsequent changes in employer contribution rates, excluding rate changes due to the direct transfer of the state-mandated portion of the employer contributions to the Public Employees' Retirement System,

through the current fiscal year. The adjustment shall be calculated for each school district, as follows:

(1) (A) Determine the amount of employer contributions that would have been made in the current fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the current fiscal year.

(B) For the purposes of this calculation, no school district shall have a contribution rate higher than 13.020 percent.

(2) Determine the actual amount of employer contributions made to the Public Employees' Retirement System in the current fiscal year.

(3) If the amount determined in paragraph (1) for a school district is greater than the amount determined in paragraph (2), the total revenue limit computed for that school district shall be decreased by the amount of the difference between those paragraphs ; or, if the amount determined in paragraph (1) for a school district is less than the amount determined in paragraph (2), the total revenue limit for that school district shall be increased by the amount of the difference between those paragraphs.

(4) For the purpose of this section, employer contributions to the Public Employees' Retirement System for any of the following positions shall be excluded from the calculation specified above:

(A) Positions or portions of positions supported by federal funds that are subject to supplanting restrictions.

(B) Positions supported by funds received pursuant to Section 42243.6.

(C) Positions supported, to the extent of employers contributions not exceeding twenty-five thousand dollars ($25,000) by any single educational agency, from a non-General Fund revenue source determined to be properly excludable from this section by the Superintendent of Public Instruction with the approval of the Director of Finance.

(5) For accounting purposes, any reduction to district revenue limits made by this provision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(6) The amount of the increase or decrease to the revenue limits of school districts computed pursuant to paragraph (3) for the 1995–96 fiscal year or any fiscal year thereafter shall not be adjusted by the deficit factor applied to the revenue limit of each school district pursuant to Section 42238.145.

(b) Funding appropriated by Provision 35 of Item 6110-485 of Section 2.00 of the Budget Act of 2001 is for the purpose of limiting the reductions to revenue limits calculated pursuant to this section and to

Section 2558 for the 2001–02 fiscal year. Funding from this appropriation shall be allocated in the following manner:

(1) Each school district and county office of education subject to a reduced apportionment pursuant to this section or to Section 2558 shall receive a share of the amount described in paragraph (3) that is proportionate to the reduction in their apportionment pursuant to this section or to Section 2558 for the 2001–02 fiscal year as compared to the statewide total reduction that would occur absent this paragraph.

(2) For the 2001–02 fiscal year, in lieu of the alternative calculation authorized by paragraph (1), San Francisco Unified School District shall receive an amount equal to five dollars and 57 cents ($5.57) multiplied by its second principal apportionment average daily attendance for the 2001–02 fiscal year.

(3) Notwithstanding any other provision of law, total allocations pursuant to this subdivision shall not exceed thirty-five million dollars ($35,000,000).

(c) For the 2002–03 fiscal year and each fiscal year thereafter, apportionment reductions pursuant to this section and to Section 2558 shall be limited as follows:

(1) Each school district and county office of education subject to a reduced apportionment pursuant to this section or to Section 2558 shall receive a share of the amount described in paragraph (3) that is proportionate to the reduction in their apportionment pursuant to this section or to Section 2558 for the 2002–03 fiscal year as compared to the statewide total reduction as would occur absent this paragraph.

(2) For the 2002–03 fiscal year and each fiscal year thereafter, in lieu of the alternative calculation authorized by paragraph (1), the San Francisco Unified School District shall receive funding equal to the amount of funding per unit of average daily attendance specified in paragraph (2) of subdivision (b) as increased annually by cost-of-living adjustments specified in Section 42238.1, multiplied by its second principal apportionment average daily attendance for that fiscal year.

(3) Notwithstanding any other provision of law, total limitations pursuant to this subdivision shall not annually exceed the amount described in paragraph (3) of subdivision (b) as annually increased by the cost-of-living adjustments specified in Section 42238.1, multiplied by the annual statewide percentage growth in total average daily attendance, measured at the second principal apportionment.

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

In order to implement the Budget Act of 2001 with respect to the public schools, it is necessary that this act take effect immediately.

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## CHAPTER 795

An act to add Chapter 4.5 (commencing with Section 1060) to Part 3 of Division 2 of the Labor Code, relating to employment.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Chapter 4.5 (commencing with Section 1060) is added to Part 3 of Division 2 of the Labor Code, to read:

### CHAPTER 4.5. DISPLACED JANITOR OPPORTUNITY ACT

1060. The following definitions shall apply throughout this chapter:

(a) ''Awarding authority'' means any person that awards or otherwise enters into contracts for janitorial or building maintenance services performed within the State of California, including any subcontracts for janitorial or building maintenance services.

(b) ''Contractor'' means any person that employs 25 or more individuals and that enters into a service contract with the awarding authority.

(c) ''Employee'' means any person employed as a service employee of a contractor or subcontractor who works at least 15 hours per week and whose primary place of employment is in the State of California under a contract to provide janitorial or building maintenance services. ''Employee'' does not include a person who is a managerial, supervisory, or confidential employee, including those employees who would be so defined under the federal Fair Labor Standards Act.

(d) ''Person'' means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(e) ''Service contract'' means any contract that has the principal purpose of providing services through the use of service employees.

(f) ''Subcontractor'' means any person who is not an employee who enters into a contract with a contractor to assist the contractor in performing a service contract.

(g) ''Successor service contract'' means a service contract for the performance of essentially the same services as were previously

performed pursuant to a different service contract at the same facility that terminated within the previous 30 days. A service contract entered into more than 30 days after the termination of a predecessor service contract shall be considered a ''successor service contract'' if its execution was delayed for the purpose of avoiding application of this chapter.

1061. (a) (1) If an awarding authority notifies a contractor that the service contract between the awarding authority and the contractor has been terminated or will be terminated, the awarding authority shall indicate in that notification whether a successor service contract has been or will be awarded in its place and, if so, shall identify the name and address of the successor contractor. The terminated contractor shall, within three working days after receiving that notification, provide to the successor contractor identified by the awarding authority, the name, date of hire, and job classification of each employee employed at the site or sites covered by the terminated service contract at the time of the contract termination.

(2) If the terminated contractor has not learned the identity of the successor contractor, if any, the terminated contractor shall provide that information to the awarding authority, which shall be responsible for providing that information to the successor contractor as soon as that contractor has been selected.

(3) The requirements of this section shall be equally applicable to all subcontractors of a terminated contractor.

(b) (1) A successor contractor or successor subcontractor shall retain, for a 60-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding four months or longer at the site or sites covered by the successor service contract unless the successor contractor or successor subcontractor has reasonable and substantiated cause not to hire a particular employee based on that employee's performance or conduct while working under the terminated contract. This requirement shall be stated by awarding authorities in all initial bid packages that are governed by this chapter.

(2) The successor contractor or successor subcontractor shall make a written offer of employment to each employee, as required by this section, in the employee's primary language or another language in which the employee is literate. That offer shall state the time within which the employee must accept that offer, but in no case may that time be less than 10 days. Nothing in this section requires the successor contractor or successor subcontractor to pay the same wages or offer the same benefits as were provided by the prior contractor or prior subcontractor.

(3) If at any time the successor contractor or successor subcontractor determines that fewer employees are needed to perform services under

the successor service contract or successor subcontract than were required by the terminated contractor under the terminated contract or terminated subcontract, the successor contractor or successor subcontractor shall retain employees by seniority within the job classification.

(c) The successor contractor or successor subcontractor, upon commencing service under the successor service contract, shall provide a list of its employees and a list of employees of its subcontractors providing services at the site or sites covered under that contract to the awarding authority. These lists shall indicate which of these employees were employed at the site or sites by the terminated contractor or terminated subcontractor. The successor contractor or successor subcontractor shall also provide a list of any of the terminated contractor's employees who were not retained either by the successor contractor or successor subcontractor, stating the reason these employees were not retained.

(d) During the 60-day transition employment period, the successor contractor or successor subcontractor shall maintain a preferential hiring list of eligible covered employees not retained by the successor contractor or successor subcontractor from which the successor contractor or successor subcontractor shall hire additional employees until such time as all of the terminated contractor's or terminated subcontractor's employees have been offered employment with the successor contractor or successor subcontractor.

(e) During the initial 60-day transition employment period, the successor contractor or successor subcontractor shall not discharge without cause an employee retained pursuant to this chapter. Cause shall be based only on the performance or conduct of the particular employee.

(f) At the end of the 60-day transition employment period, a successor contractor or successor subcontractor shall provide a written performance evaluation to each employee retained pursuant to this chapter. If the employee's performance during that 60-day period is satisfactory, the successor contractor or successor subcontractor shall offer the employee continued employment. Any employment after the 60-day transition employment period shall be at-will employment under which the employee may be terminated without cause.

1062. (a) An employee, who was not offered employment or who has been discharged in violation of this chapter by a successor contractor or successor subcontractor, or an agent of the employee may bring an action against a successor contractor or successor subcontractor in any superior court of the State of California having jurisdiction over the successor contractor or successor subcontractor. Upon finding a violation of this chapter, the court shall award backpay, including the value of benefits, for each day during which the violation has occurred

and continues to occur. The amount of backpay shall be calculated as the greater of either of the following:

(1) The average regular rate of pay received by the employee during the last three years of the employee's employment in the same occupation classification multiplied by the average hours worked during the last three years of the employee's employment.

(2) The final regular rate of pay received by the employee at the time of termination of the predecessor contract multiplied by the number of hours usually worked by the employee.

(b) The court may order a preliminary or permanent injunction to stop the continued violation of this chapter.

(c) If the employee is the prevailing party in the legal action, the court shall award the employee reasonable attorney's fees and costs as part of the costs recoverable.

(d) In the absence of a claim by an employee that he or she was terminated in violation of this chapter, an employee may not maintain a cause of action under this chapter solely for the failure of an employer to provide a written performance evaluation.

1063. (a) This chapter only applies to contracts entered into on or after January 1, 2002.

(b) Except for the obligations specified in subdivisions (a) and (b) of Section 1061, nothing in this chapter changes or increases the relationship or duties of a property owner or an awarding authority, or their agents, with respect to contractors, subcontractors, or their employees.

(c) Nothing in this chapter limits the right of a property owner or an awarding authority to terminate a service contract or to replace a contractor with another contractor or with the property owner's or awarding authority's own employees.

1064. Nothing in this chapter shall prohibit a local government agency from enacting ordinances relating to displaced janitors that impose greater standards than, or establish additional enforcement provisions to, those prescribed by this chapter.

1065. If any provision or provisions of this chapter or any application thereof is held invalid, that invalidity shall not affect any other provisions or applications of this chapter that can be given effect notwithstanding that invalidity.

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## CHAPTER 796

An act to add Section 21390 to the Government Code, relating to public employees' retirement.

[Approved by Governor October 12, 2001. Filed with
Secretary of State October 13, 2001.]

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

SECTION 1. Section 21390 is added to the Government Code, to read:

21390. Notwithstanding Sections 21362, 21362.2, 21363, 21363.1, 21369, 21370, and 21389, for local safety members who retire on or after January 1, 2002, and with respect to all local safety service rendered to a contracting agency that is subject to any of those sections, the benefit limit shall be 90 percent of final compensation.

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## CHAPTER 797

An act to amend Sections 19849.22 and 20687.2 of the Government Code, relating to state employees.

[Approved by Governor October 12, 2001. Filed with
Secretary of State October 13, 2001.]

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

SECTION 1. Section 19849.22 of the Government Code is amended to read:

19849.22. The Legislature finds and declares the following:

(a) If the state is to attract and retain a competent correction workforce, there is a compelling need to adequately compensate state peace officer/firefighter members who are supervisors.

(b) A supervisory compensation differential is necessary to compensate state peace officer/firefighter members who are supervisors within the departments and boards of the Youth and Adult Correctional Agency or who are correctional supervisors within the State Department of Mental Health for the greater responsibility of accomplishing correctional work through the direction of others.

(c) For purposes of measuring the compensation differential referred to in subdivision (b), the value of salaries and other economic benefits shall be considered in calculating comparative rates.

SEC. 2. Section 20687.2 of the Government Code is amended to read:

20687.2. Notwithstanding Section 20687, the normal rate of contribution for state peace officer/firefighter members who are

supervisors within the boards and departments of the Youth and Adult Correctional Agency or who are correctional supervisors within the State Department of Mental Health for pay periods beginning after April 30, 2001, shall be 8 percent of compensation in excess of eight hundred sixty-three dollars ($863) per month paid those members.

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## CHAPTER 798

An act to repeal and add Section 22825.5 to the Government Code, relating to public employee postretirement health benefits.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 22825.5 of the Government Code is repealed.

SEC. 2. Section 22825.5 is added to the Government Code, to read:

22825.5. (a) Notwithstanding Section 22825, the percentage of employer contribution payable for postretirement health benefits for any employee of a contracting agency subject to this section shall, except as provided in subdivision (b), be based on the member's completed years of credited state service at retirement as shown in the following table:

| Credited Years of Service | Percentage of Employer Contribution |
|---|---|
| 10 | 50 |
| 11 | 55 |
| 12 | 60 |
| 13 | 65 |
| 14 | 70 |
| 15 | 75 |
| 16 | 80 |
| 17 | 85 |
| 18 | 90 |
| 19 | 95 |
| 20 or more | 100 |

This subdivision shall apply only to employees who retire for service and, except as provided in paragraph (6), who are first employed after this section becomes applicable to their employer. The application of this

subdivision to those employees shall be subject to the following provisions:

(1) The employer's contribution with respect to each annuitant shall be adjusted by the employer each year. Those adjustments shall be based upon the principle that the employer's contribution for each annuitant shall not be more than 100 percent of the premium applicable to him or her, nor less than an amount equal to 100 percent of the weighted average of the health benefits plan premiums for employees or annuitants enrolled for self alone plus 90 percent of the weighted average of the additional premiums required for enrollment of family members in the four health benefits plans that have the largest number of enrollments during the fiscal year to which the formula applied.

(2) The employer shall have, in the case of employees represented by a bargaining unit, reached an agreement with that bargaining unit to be subject to this section.

(3) The employer shall certify to the board, in the case of employees not represented by a bargaining unit, that there is not an applicable memorandum of understanding.

(4) The credited service of any employee for the purposes of determining the percentage of employer contributions applicable under this section shall mean state service as defined in Section 20069, except that not less than five years of that service shall be performed entirely with that employer.

(5) The employer shall provide the board any information requested that the board determines is necessary to implement this section.

(6) The employer may, once each year without discrimination, allow all employees who were first employed before this section became applicable to the employer to individually elect to be subject to the provisions of this section and the employer shall notify the board which employees have made that election.

(b) Notwithstanding subdivision (a), the contribution payable by an employer subject to this section shall be equal to 100 percent of the amount established pursuant to paragraph (1) of subdivision (a) on behalf of any annuitant who either:

(1) Retired for disability.

(2) Retired for service with 20 or more years of service credit entirely with that employer, regardless of the number of days after separation from employment. The contribution payable by an employer under this paragraph shall be paid only if it is greater than, and made in lieu of, any contribution payable to the annuitant by any other employer under this part.

The board shall establish application procedures and eligibility criteria under this subdivision.

(c) This section shall not apply to any contracting agency nor to its employees and annuitants unless and until the agency files with the board a resolution of its governing body electing to be so subject. The resolution shall be adopted by a majority vote of the governing body and shall be effective at the time provided in the board's regulations.

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## CHAPTER 799

An act to add Section 70901.2 to the Education Code, relating to community colleges.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 70901.2 is added to the Education Code, to read:

70901.2. (a) Notwithstanding any other provision of law, when a classified staff representative is to serve on a college or district task force, committee, or other governance group, the exclusive representative of classified employees of that college or district shall appoint the representative for the respective bargaining unit members. The exclusive representative of the classified employees and the local governing board may mutually agree to an alternative appointment process through a memorandum of understanding. A local governing board may consult with other organizations of classified employees on shared governance issues that are outside the scope of bargaining. These organizations shall not receive release time, rights, or representation on shared governance task forces, committees, or other governance groups exceeding that offered to the exclusive representative of classified employees.

(b) A local governing board shall determine a process for the selection of a classified staff representative to serve on those task forces, committees, or other governance groups in a situation where no exclusive representative exists.

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.

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## CHAPTER 800

An act to add Section 24209.3 to the Education Code, relating to teachers' retirement benefits, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 24209.3 is added to the Education Code, to read:

24209.3. (a) Notwithstanding subdivision (a) of Section 24209 and subdivision (d) of Section 24204, and exclusive of any amounts payable during the prior retirement for service pursuant to Section 22714 or22715:

(1) A member who retired, other than pursuant to Section 24210, 24211, 24212, or 24213, and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) An amount calculated pursuant to this chapter based on credited service performed prior to the most recent reinstatement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation.

(B) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation.

(2) A member who retired pursuant to Section 24210 and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) An amount calculated pursuant to this chapter based on service credit accrued prior to the effective date of the disability retirement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and indexed final compensation to the effective date of the initial service retirement.

(B) An amount calculated pursuant to this chapter based on the service credit accrued after termination of the disability retirement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation.

(C) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation.

(3) A member who retired pursuant to Section 24211 and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) The greater of (i) the disability allowance the member was receiving immediately prior to termination of that allowance, excluding the children's portion, or (ii) an amount calculated pursuant to this chapter based on service credit accrued prior to the effective date of the disability retirement, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable or projected final compensation or a combination of both.

(B) An amount equal to either of the following:

(i) For a member who was receiving a benefit pursuant to subdivision (a) of Section 24211, the member's credited service at the time of the retirement pursuant to Section 24211, excluding service credited pursuant to Section 22717 or 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820).

(ii) For a member who was receiving a benefit pursuant to subdivision (b) of Section 24211, the member's projected service, excluding service credited pursuant to Section 22717 or 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820).

(C) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final

compensation using compensation earnable or projected final compensation or a combination of both.

(D) An amount based on any service credited pursuant to Chapter 14 (commencing with Section 22800 or Chapter 14,2 (commencing with Section 22820) or, for credited service performed during the most recent reinstatement, Section 22714, 22715, 22717, or 22717.5, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(4) A member who retired pursuant to Section 24212 or 24213 and who reinstates and performs creditable service, as defined in Section 22119.5, after the most recent reinstatement, in an amount equal to two or more years of credited service, shall, upon retirement for service on or after the effective date of this section, receive a service retirement allowance equal to the sum of the following:

(A) An amount calculated pursuant to this chapter based on the member's projected service credit, excluding service credited pursuant to Section 22717, 22717.5, or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable or projected final compensation or a combination of both.

(B) An amount calculated pursuant to this chapter based on credited service performed subsequent to the most recent reinstatement, using the member's age at the subsequent service retirement, and final compensation, using compensation earnable or projected final compensation or a combination of both.

(C) An amount based on any service credited pursuant to Chapter 14 (commencing with Section 22800 or Chapter 14,2 (commencing with Section 22820) or, for credited service performed during the most recent reinstatement, Section 22714, 22715, 22717, or 22717.5, using the member's age at the subsequent service retirement, from which age shall be deducted the total time during which the member was retired for service, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(b) If the total amount of credited service, other than that accrued pursuant to Sections 22714, 22715, 22717, 22717.5, and 22826, is equal to or greater than the number of years required to be eligible for an increased allowance pursuant to this chapter or Section 22134.5, the amounts identified in this section shall be calculated pursuant to the section authorizing the increased benefit.

(c) For members receiving an allowance pursuant to Section 24410.5 or 24410.6, the amount payable pursuant to this section shall not be less than the amount payable to the member as of the effective date of reinstatement.

(d) The amount payable pursuant to this section shall not be less than the amount that would be payable to the member pursuant to Section 24209.

(e) For purposes of determining an allowance increase pursuant to Sections 24415 and 24417, the calendar year of retirement shall be the year of the subsequent retirement if the final compensation used to calculate the allowance pursuant to this section is higher than the final compensation used to calculate the allowance for the prior retirement.

(f) The allowance paid pursuant to this section to a member receiving a lump sum payment pursuant to Section 24237 shall be actuarially reduced to reflect that lump sum payment.

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

In order to provide improved retirement benefits to teachers who have returned to teaching following retirement, it is necessary that this act take effect immediately.

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## CHAPTER 801

An act to add Section 3508.1 to the Government Code, relating to public safety employees.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 3508.1 is added to the Government Code, to read:

3508.1. For the purposes of this section, the term ''police employee'' includes the civilian employees of the police department of any city. Police employee does not include any public safety officer within the meaning of Section 3301.

(a) With respect to any police employee, except as provided in this subdivision and subdivision (d), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the

allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 2002. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the police employee of its proposed disciplinary action within that year, except in any of the following circumstances:

(1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(2) If the police employee waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(4) If the investigation involves more than one employee and requires a reasonable extension.

(5) If the investigation involves an employee who is incapacitated or otherwise unavailable, the time during which the person is incapacitated or unavailable shall toll the one-year period.

(6) If the investigation involves a matter in civil litigation in which the police employee is named as a party defendant, the one-year time period shall be tolled while the civil action is pending.

(7) If the investigation involves a matter in criminal litigation in which the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(8) If the investigation involves an allegation of workers' compensation fraud on the part of the police employee.

(b) When a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.

(c) If, after investigation and predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the police employee in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the police employee is unavailable for discipline.

(d) Notwithstanding the one-year time period specified in subdivision (a), an investigation may be reopened against a police employee if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exists:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the police employee's predisciplinary response or procedure.

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.

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## CHAPTER 802

An act to amend Sections 22360 and 22802 of, to amend and repeal Sections 22123 and 24600 of, and to repeal Section 22139 of, the Education Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 22123 of the Education Code, as added by Section 9 of Chapter 1165 of the Statutes of 1996, is amended to read:

22123. (a) ''Dependent child'' or ''dependent children'' under the disability allowance and family allowance programs means a member's unmarried offspring or stepchild who is not older than 22 years of age and who is financially dependent upon the member on the effective date of the member's disability allowance or the date of the member's death.

(b) ''Offspring'' shall include the member's child who is born within the 10-month period commencing on the earlier of the member's disability allowance effective date or the date of the member's death.

(c) ''Offspring'' shall include a child adopted by the member.

(d) ''Dependent child'' shall not include the member's offspring or stepchild who is adopted by a person other than the member's spouse.

(e) ''Dependent child'' under the family allowance program shall not include:

(1) The member's offspring or stepchild who was financially dependent on the member on the date of the member's death if a disability allowance was payable to the member prior to his or her death and the disability allowance did not include an amount payable for that offspring or stepchild.

(2) A stepchild or adopted child acquired subsequent to the death of the member.

(f) ''Financially dependent'' for purposes of this section means that at least one-half of the child's support was being provided by the member on the member's disability allowance effective date or the date of the member's death. The system may require that income tax records or other data be submitted to substantiate the child's financial dependence. In the absence of substantiating documentation, the system may determine that the child was not dependent on the effective date of the member's disability allowance or the date of the member's death.

(g) ''Member'' as used in this section shall have the same meaning specified in Section 23800.

SEC. 2. Section 22123 of the Education Code, as added by Section 9.5 of Chapter 1165 of the Statutes of 1996, is repealed.

SEC. 3. Section 22139 of the Education Code, as added by Section 12.5 of Chapter 1165 of the Statutes of 1996, is repealed.

SEC. 4. Section 22360 of the Education Code is amended to read:

22360. (a) Notwithstanding any other provision of law, the board may pursuant to Section 22203 and in conformance with its fiduciary duty set forth in Section 22250, enter into correspondent agreements with private lending institutions in this state to utilize the retirement fund to invest in residential mortgages, including assisting borrowers, through financing, to obtain homes in this state.

(b) The program shall, among other things, provide:

(1) That home loans be made available to borrowers for the purchase of single-family dwellings, two-family dwellings, three-family dwellings, four-family dwellings, single-family cooperative apartments, and single-family condominiums.

(2) That the recipients of the loans occupy the homes as their principal residences in accordance with policies established by the board.

(3) That the home loans shall be available only for the purchase or refinance of homes in this state.

(4) That the amount and length of the loans shall be pursuant to a schedule periodically established by the board that shall provide a loan of up to 100 percent of the appraised value. In no event shall the loan amount exceed 200 percent of the conforming loan limit set by the Federal National Mortgage Association (FNMA) or 200 percent of the

conforming loan limit set by the Federal Home Loan Mortgage Corporation (FHLMC), whichever is greater. The portion of any loan exceeding 80 percent of value shall be insured by an admitted mortgage guaranty insurer conforming to Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2 of the Insurance Code, in an amount so that the unguaranteed portion of the loan does not exceed 75 percent of the market value of the property together with improvements thereon.

(5) That there may be prepayment penalties assessed on the loans in accordance with policies established by the board.

(6) That the criteria and terms for its loans shall be consistent with the financial integrity of the program and the sound investment of the retirement fund.

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

(c) It is the intent of the Legislature that the provisions of this section be used to establish an investment program for residential mortgages, including assisting borrowers in purchasing homes in this state, or refinancing a mortgage loan. The Legislature intends that home loans made pursuant to this section shall be secured primarily by the property purchased or refinanced and shall not exceed the appraised value of that property.

(d) Appropriate administrative costs of implementing this section and Section 22360.5 shall be paid by the participating borrowers. Those costs may be included in the loan amount.

(e) Appropriate interest rates shall be periodically reviewed and adjusted to provide loans to borrowers consistent with the financial integrity of the home loan program and the sound and prudent investment of the retirement fund. Under no circumstances, however, shall the interest rates offered to borrowers be below current market rate.

(f) The board shall administer this section and Section 22360.5 under other terms and conditions it deems appropriate and in keeping with the investment standard. The board may adopt policies as necessary for its administration of this section and Section 22360.5 and to assure compliance with applicable state and federal laws.

(g) This section and Section 22360.5 shall be known as, and may be cited as, the Dave Elder State Teachers' Retirement System Home Loan Program Act.

SEC. 5. Section 22802 of the Education Code is amended to read:

22802. (a) A member who was previously excluded from membership in the Defined Benefit Program may elect to receive credit for:

(1) Service as a substitute excluded under Section 22602.

(2) Creditable service subject to coverage under the Cash Balance Benefit Program, excluding service credited pursuant to Section 26402,

if the member has terminated all service subject to coverage under the Cash Balance Benefit Program. Upon electing to receive credit under this paragraph, the member shall cease to be eligible for a benefit for the same service or time previously credited under the Cash Balance Benefit Program pursuant to Part 14 (commencing with Section 26000).

(3) Service performed on a part-time basis excluded under Section 22601.5 or Section 22604, other than service credited under paragraph (2).

(4) Adult education service excluded under Section 22603, as it read on December 31, 1995.

(5) Service as a school nurse excluded under Section 22606, as it read on December 31, 1995.

(6) Service performed in a position prior to the date the position was made subject to coverage under the Defined Benefit Program.

(7) Service subject to coverage under the Defined Benefit Program performed while a member of another California public retirement system, provided the member has ceased to be a member of, and has ceased to be entitled to benefits from, the other retirement system. The member shall not receive credit for the service if the member may redeposit withdrawn contributions and subsequently be eligible for any benefits based upon the same service or based upon other full-time service performed during the same period, from another California public retirement system.

(b) A member who elects to receive credit under this part for service performed while excluded from membership under the Defined Benefit Program shall pay all of the required contributions for all or the portion of that service for which the member elects to receive credit.

(c) A member may not elect to receive credit for service or time described in paragraphs (1) and (3) to (7), inclusive, of subdivision (a) if, after the election, the member would continue to receive credit for the same service or time in the Cash Balance Benefit Program under Part 14 (commencing with Section 26000) or another retirement system.

SEC. 6. Section 24600 of the Education Code, as amended by Section 40 of Chapter 1021 of the Statutes of 2000, is amended to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance is terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability allowance and ceases on the

earlier of the day of the member's death or the day on which the disability allowance is terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance.

(g) Supplemental payments issued under this part pursuant to Sections 24411, 24412, and 24415 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24411, 24412, and 24415 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive, of this section.

(h) Notwithstanding any other provision of this part or other law, distributions payable under the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be made in accordance with applicable provisions of the Internal Revenue Code of 1986, as amended, and related regulations. The required beginning date of benefit payments that represent the entire interest of the member in the plan with respect to the Defined Benefit Program and the Defined Benefit Supplement Program shall be either:

(1) In the case of a refund of contributions, as described in Chapter 18 (commencing with Section 23100) of this part and distribution of an amount equal to the balance of credits in a member's Defined Benefit Supplement account, as described in Chapter 38 (commencing with Section 25000) of this part, not later than April 1 of the calendar year following the later of the calendar year in which the member attains age $70^1/_2$ years of age or the calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22166, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains $70^1/_2$ years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), the phrase ''terminates employment'' means the later of:

(1) The date the member ceases to perform creditable service subject to coverage under this plan.

(2) The date the member ceases employment in a position subject to coverage under another public retirement system in this state if the compensation earnable while a member of the other system may be considered in the determination of final compensation pursuant to Section 22134, 22135, or 22136.

SEC. 7. Section 24600 of the Education Code, as added by Section 42 of Chapter 1021 of the Statutes of 2000, is repealed.

SEC. 8. There is hereby appropriated the sum of one million dollars ($1,000,000) from the Teachers' Retirement Fund to the Teachers' Retirement Board for the payment of administrative costs of implementing benefit changes that shall become operative on or after January 1, 2002.

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## CHAPTER 803

An act to amend Sections 22119.2, 22138.6, 22151, 22352, 22664, 22820, 22900, 24001, 24001.5, 24101, 24203.5, 24203.6, 24209, 24211, 24212, 24255, 24260, 24300.5, 24307, 24402, 24404, 24410.6, 25011, 25014, 25015, 25018, 25019, 25021, 25024, 25925, 25930, 25940, 26400, 26401, 26807, 26906, 26911, 27007, and 27008 of, to amend the heading of Chapter 4 (commencing with Section 25940) of Part 13.5 of Division 1 of, to amend and renumber the heading of Article 6 (commencing with Section 25024) of Chapter 38 of Part 13 of Division 1 of, to amend and repeal Section 26402 of, to add Sections 22811, 25921, and 25926 to, to repeal Sections 22136.5 and 25026 of, and to repeal and add Section 27004 of, the Education Code, and to amend Sections 22878.2 and 22878.3 of the Government Code, relating to state teachers' retirement.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 22119.2 of the Education Code is amended to read:

22119.2. (a) ''Creditable compensation'' means salary and other remuneration payable in cash by an employer to a member for creditable service. Creditable compensation shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(2) For members not paid according to a salary schedule, money paid for creditable service performed up to and including the full-time equivalent for the position in which the service is performed.

(3) Money paid for the member's absence from performance of creditable service as approved by the employer, except as provided in paragraph (7) of subdivision (b).

(4) Member contributions picked up by an employer pursuant to Section 22903 or 22904.

(5) Amounts deducted by an employer from the member's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Money paid in accordance with a salary schedule by an employer to an employee for achieving certification from a national board based, in part, on years of training or years of experience in teaching service, if the compensation is paid by the employer to all employees who achieved this certification.

(8) Any other payments the board determines to be ''creditable compensation.''

(b) ''Creditable compensation'' does not mean and shall not include:

(1) Money paid for service performed in excess of the full-time equivalent for the position.

(2) Money paid for overtime or summer school service, or money paid for the aggregate service performed as a member of the Defined Benefit Program in excess of one year of service credit for any one school year.

(3) Money paid for service that is not creditable service pursuant to Section 22119.5.

(4) Money paid by an employer in addition to salary paid under paragraph (1) or (2) of subdivision (a) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed, except as provided in paragraph (7) of subdivision (a).

(5) Fringe benefits provided by an employer.

(6) Job-related expenses paid or reimbursed by an employer.

(7) Money paid for unused accumulated leave.

(8) Severance pay or compensatory damages or money paid to a member in excess of salary as a compromise settlement.

(9) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for the member and are not deducted from the member's salary.

(10) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a member's benefits under the Defined Benefit Program. An increase in the salary of a member who is the only employee in a class pursuant to subdivision (b) of Section 22112.5 that arises out of an employer's restructuring of compensation during the member's final compensation period shall be presumed to have been granted for the principal purpose of enhancing benefits under the Defined Benefit Program and shall not be creditable compensation. If the board determines sufficient evidence is provided to the system to rebut this presumption, the increase in salary shall be deemed creditable compensation.

(11) Any other payments the board determines not to be ''creditable compensation.''

(c) Any employer or person who knowingly or willfully reports compensation in a manner inconsistent with subdivision (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of that inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with the Penal Code. The system may establish procedures to ensure that compensation reported by an employer is in compliance with this section.

(d) The definition of ''creditable compensation'' in this section is designed in accordance with sound funding principles that support the integrity of the retirement fund. These principles include, but are not limited to, consistent treatment of compensation throughout the career of the individual member, consistent treatment of compensation for an entire class of employees, the prevention of adverse selection, and the exclusion of adjustments to, or increases in, compensation for the principal purpose of enhancing benefits.

(e) This section shall be deemed to have become operative on July 1, 1996.

(f) This section shall become inoperative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise this section shall become inoperative on July 1, 2003 and as of January 1, 2004, this section 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.

SEC. 2. Section 22136.5 of the Education Code is repealed.

SEC. 3. Section 22138.6 of the Education Code is amended to read:

22138.6. ''Full-time equivalent'' means the days or hours of creditable service that a person who is employed on a part-time basis would be required to perform in a school year if he or she were employed full time in that part-time position.

SEC. 4. Section 22151 of the Education Code is amended to read:

22151. ''Overtime'' means the aggregate creditable service in excess of one year (1.000) of creditable service that is performed by a member in a school year.

SEC. 5. Section 22352 of the Education Code is amended to read:

22352. (a) Upon a finding by the board that necessary investment expertise is not available within existing civil service classifications, and with the approval of the State Personnel Board, the board may contract with qualified investment managers having demonstrated expertise in the management of large and diverse investment portfolios to render service in connection with the investment program of the board.

(b) The board shall report to the Governor, the Legislature, and the Joint Legislative Budget Committee on the nature, duration, and cost of investment contract services used. The report shall first be submitted in April 1987, and annually in April of every year thereafter.

SEC. 6. Section 22664 of the Education Code is amended to read:

22664. The nonmember spouse who is awarded a separate account shall have the right to a service retirement allowance and, if applicable, a retirement benefit under this part.

(a) The nonmember spouse shall be eligible to retire for service under this part if the following conditions are satisfied:

(1) The member had at least five years of credited service during the period of marriage, at least one year of which had been performed subsequent to the most recent refund to the member of accumulated retirement contributions. The credited service may include service credited to the account of the member as of the date of the dissolution or legal separation, previously refunded service, out-of-state service, and permissive service credit that the member is eligible to purchase at the time of the dissolution or legal separation.

(2) The nonmember spouse has at least two and one-half years of credited service in his or her separate account.

(3) The nonmember spouse has attained the age of 55 years or more.

(b) A service retirement allowance of a nonmember spouse under this part shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonmember spouse has filed an application for service retirement on a form provided by the system, that is executed no earlier than six months before the effective date of the retirement allowance.

(3) The effective date is no earlier than the first day of the month in which the application is received at the system's office in Sacramento and the effective date is after the date the judgment or court order pursuant to Section 22652 was entered.

(c) (1) Upon service retirement at normal retirement age under this part, the nonmember spouse shall receive a retirement allowance that shall consist of an annual allowance payable in monthly installments equal to 2 percent of final compensation for each year of credited service.

(2) If the nonmember spouse's retirement is effective at less than normal retirement age and between early retirement age under this part and normal retirement age, the retirement allowance shall be reduced by one-half of 1 percent for each full month, or fraction of a month, that will elapse until the nonmember spouse would have reached normal retirement age.

(3) If the nonmember spouse's service retirement is effective at an age greater than normal retirement age and is effective on or after January 1, 1999, the percentage of final compensation for each year of credited service shall be determined pursuant to the following table:

| Age at Retirement | Percentage |
|---|---|
| 60 1/4 | 2.033 |
| 60 1/2 | 2.067 |
| 60 3/4 | 2.10 |
| 61 | 2.133 |
| 61 1/4 | 2.167 |
| 61 1/2 | 2.20 |
| 61 3/4 | 2.233 |
| 62 | 2.267 |
| 62 1/4 | 2.30 |
| 62 1/2 | 2.333 |
| 62 3/4 | 2.367 |
| 63 and over | 2.40 |

(4) In computing the retirement allowance of the nonmember spouse, the age of the nonmember spouse on the last day of the month in which the retirement allowance begins to accrue shall be used.

(5) Final compensation, for purposes of calculating the service retirement allowance of the nonmember spouse under this subdivision,

shall be calculated according to the definition of final compensation in Section 22134, 22134.5, 22135, or 22136, whichever is applicable, and shall be based on the member's compensation earnable up to the date the parties separated, as established in the judgment or court order pursuant to Section 22652. The nonmember spouse shall not be entitled to use any other calculation of final compensation.

(d) If the member is or was receiving a disability allowance under this part with an effective date before or on the date the parties separated as established in the judgment or court order pursuant to Section 22652, or at any time applies for and receives a disability allowance with an effective date that is before or coincides with the date the parties separated as established in the judgment or court order pursuant to Section 22652, the nonmember spouse shall not be eligible to retire until after the disability allowance of the member terminates. If the member who is or was receiving a disability allowance returns to employment to perform creditable service subject to coverage under the Defined Benefit Program or has his or her allowance terminated under Section 24015, the nonmember spouse may not be paid a retirement allowance until at least six months after termination of the disability allowance and the return of the member to employment to perform creditable service subject to coverage under the Defined Benefit Program, or the termination of the disability allowance and the employment or self-employment of the member in any capacity, notwithstanding Section 22132. If at the end of the six-month period, the member has not had a recurrence of the original disability or has not had his or her earnings fall below the amounts described in Section 24015, the nonmember spouse may be paid a retirement allowance if all other eligibility requirements are met.

(1) The retirement allowance of the nonmember spouse under this subdivision shall be calculated as follows: the disability allowance the member was receiving, exclusive of the portion for dependent children, shall be divided between the share of the member and the share of the nonmember spouse. The share of the nonmember spouse shall be the amount obtained by multiplying the disability allowance, exclusive of the portion for dependent children, by the years of service credited to the separate account of the nonmember spouse, including service projected to the date of separation, and dividing by the projected service of the member. The nonmember spouse's retirement allowance shall be the lesser of the share of the nonmember spouse under this subdivision or the retirement allowance under subdivision (c).

(2) The share of the member shall be the total disability allowance reduced by the share of the nonmember spouse. The share of the member shall be considered the disability allowance of the member for purposes of Section 24213.

(e) The nonmember spouse who receives a retirement allowance is not a retired member under this part. However, the allowance of the nonmember spouse shall be increased by application of the improvement factor and shall be eligible for the application of supplemental increases and other benefit maintenance provisions under this part, including, but not limited to, Sections 24411, 24412, and 24415 based on the same criteria used for the application of these benefit maintenance increases to the service retirement allowances of members.

SEC. 7. Section 22811 is added to the Education Code, to read:

22811. Pursuant to terms and conditions established by the board, members may transfer funds from eligible retirement plans into the Teachers' Retirement Fund to purchase service credit or redeposit previously refunded contributions pursuant to this chapter, Chapter 14.2 (commencing with Section 22820), Chapter 14.5 (commencing with Section 22850), and Chapter 19 (commencing with Section 23200), to the extent that the transfer is allowable under, and is completed in a manner prescribed by, applicable federal and state law and any related regulations.

SEC. 8. Section 22820 of the Education Code is amended to read:

22820. (a) A member, other than a retired member, may elect to purchase out-of-state service credited in a public retirement system for service covering public education in another state or territory of the United States or by the United States for its citizens. In no event shall the member receive credit for this service if the member has credit or is eligible to receive credit for the same service in the Cash Balance Benefit Program under Part 14 (commencing with Section 26000) or another public retirement system, excluding social security.

(b) The amount of out-of-state service for which a member may purchase credit may not exceed the number of years of service credited to the member in the out-of-state retirement system or 10 years, whichever is less.

(c) Out-of-state service credit may be purchased under this section by means of any of the following actions:

(1) Paying an amount equal to the amount refunded from the other public retirement system and receiving service credit under the Defined Benefit Program pursuant to subdivision (a) of Section 22823.

(2) Paying the contributions required under the Defined Benefit Program pursuant to subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(3) Paying an amount equal to the amount refunded from the other public retirement system and an additional amount in accordance with subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(d) Compensation for out-of-state service shall not be used in determining the highest average annual compensation earnable when calculating final compensation.

(e) The service credit purchased under this section shall not be used to meet the eligibility requirements for benefits provided under Sections 24001 and 24101.

SEC. 9. Section 22900 of the Education Code is amended to read:

22900. By accepting employment to perform creditable service, a person consents to make contributions pursuant to Section 22901 for service and compensation credited under this part.

SEC. 10. Section 24001 of the Education Code is amended to read:

24001. (a) A member may apply for a disability allowance under the Defined Benefit Program if the member has five or more years of credited service and if all of the following requirements are met:

(1) At least four years were credited for actual performance of service subject to coverage under the Defined Benefit Program. Credit received because of workers' compensation payments shall be counted toward the four-year requirement in accordance with Section 22710.

(2) The last five years of credited service were performed in this state.

(3) At least one year was credited for service performed subsequent to the date on which the member terminated the service retirement allowance under Section 24208.

(4) At least one year was credited for service performed subsequent to the most recent refund of accumulated retirement contributions.

(5) The member has neither attained normal retirement age, nor possesses sufficient unused sick leave days to receive creditable compensation on account of sick leave to normal retirement age.

(6) The member is not applying for a disability allowance because of a physical or mental condition known to exist at the time the most recent membership in the Defined Benefit Program commenced and remains substantially unchanged at the time of application.

(b) Nothing in subdivision (a) shall affect the right of a member to a disability allowance under this part if the reason that the member is credited with less than four years of actual service performed subject to coverage under the Defined Benefit Program is due to an on-the-job injury or a disease that occurred while the member was employed and the four-year requirement can be satisfied by credit obtained under Chapter 14 (commencing with Section 22800) or Chapter 14.5 (commencing with Section 22850) in addition to any credit received from workers' compensation payments.

(c) Nothing in subdivision (a) shall affect the right of a member under this part who has less than five years of credited service to a disability allowance providing the member has at least one year of credited California service and if the reason for the disability is due to an unlawful

act of bodily harm committed by another human being on the person of the member while the member was performing his or her official duties in a position subject to coverage under the Defined Benefit Program.

SEC. 11. Section 24001.5 of the Education Code is amended to read:

24001.5. A member shall not be eligible for a disability allowance under the Defined Benefit Program while on a leave of absence to serve as a full-time elected officer of an employee organization, even if the member receives service credit under Section 22711.

SEC. 12. Section 24101 of the Education Code is amended to read:

24101. (a) A member may apply for a disability retirement under this part if the member has five or more years of credited service and if all of the following requirements are met:

(1) At least four years were credited for actual service performed subject to coverage under the Defined Benefit Program. Credit received because of workers' compensation payments shall be counted toward the four-year requirement in accordance with Section 22710.

(2) The last five years of credited service were performed in this state.

(3) At least one year (1.000) of credited service was earned subsequent to the date on which the member terminated the service retirement allowance under Section 24208.

(4) At least one year (1.000) of credited service was earned subsequent to the date on which the member's disability allowance was terminated.

(5) At least one year (1.000) of credited service was earned subsequent to the most recent refund of accumulated retirement contributions.

(6) The member is not applying for a disability retirement because of a physical or mental condition known to exist at the time the most recent membership in the Defined Benefit Program commenced and that remains substantially unchanged at the time of application.

(b) Nothing in subdivision (a) shall affect the right of a member to a disability retirement if the reason that the member has performed less than four years of actual service is due to an on-the-job injury or a disease while in employment subject to coverage by the Defined Benefit Program and the four-year requirement can be satisfied by credit obtained under Chapter 14 (commencing with Section 22800) or Chapter 14.5 (commencing with Section 22850) in addition to any credit received from workers' compensation payments.

(c) Nothing in subdivision (a) shall affect the right of a member who has less than five years of credited service to a disability retirement allowance providing the member has at least one year of credited California service and if the reason for the disability is due to an unlawful act of bodily harm committed by another human being on the person of

the member while the member was performing his or her official duties in a position subject to coverage under the Defined Benefit Program.

SEC. 13. Section 24203.5 of the Education Code is amended to read:

24203.5. (a) The percentage of final compensation used to compute the allowance pursuant to Section 24202.5, 24203, or 24205 of a member retiring on or after January 1, 1999, who has 30 or more years of credited service, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22717.5, shall be increased by two-tenths of 1 percentage point, provided that the sum of the percentage of final compensation used to compute the allowance in Section 24202.5, 24203, or 24205, including any adjustments for retiring before the normal retirement age, and the additional percentage provided by this section does not exceed 2.40 percent. For purposes of establishing eligibility for the increased allowance pursuant to this section only, credited service shall include credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652. A nonmember spouse shall also be eligible for the increased allowance pursuant to this section if the member had 30 or more years of credited service on the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

(b) Nonqualified service credit for which contributions pursuant to Section 22826 were made in a lump sum on or after January 1, 2000, or for which the first installment was made on or after January 1, 2000, shall not be included in determining the eligibility for an increased allowance pursuant to this section.

(c) The amendments made to subdivision (a) in the first year of the 1999–2000 Regular Session are declaratory of existing law.

SEC. 14. Section 24203.6 of the Education Code is amended to read:

24203.6. (a) In addition to the amount otherwise payable pursuant to Sections 24202.5, 24203, 24203.5, 24205, 24209.5, 24210, 24211, and 24212, a member who (1) retires for service on or after January 1, 2001, (2) has, prior to January 1, 2011, 30 or more years of credited service, excluding service credited pursuant to Sections 22714, 22715, 22717, 22717.5, and 22826 but including any credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652, and (3) is receiving an allowance subject to Section 24203.5, shall receive a monthly increase in the allowance, prior to any modification pursuant to Sections 24300 and 24309, in the amount identified in the following schedule for the number of years of the member's credited service at the time of retirement, excluding service credited pursuant to Sections 22714, 22715, 22717, 22717.5, and 22826

but including any credited service that a court has ordered be awarded to a nonmember spouse pursuant to Section 22652:

| | |
|---|---|
| 30 years of credited service . . . . . | $200 |
| 31 years of credited service . . . . . | $300 |
| 32 or more years of credited service . . . . . | $400 |

(b) This section also shall apply to a nonmember spouse, if the member is eligible for the allowance increase pursuant to subdivision (a) upon his or her retirement for service and had at least 30 years of credited service, excluding service credited pursuant to Sections 22714, 22715, 22717, 22717.5, and 22826, on the date the parties separated, as established in the judgment or court order pursuant to Section 22652 and the service credit of the member was divided into separate accounts in the name of the member and the nonmember spouse by a court pursuant to Section 22652. The amount identified in the schedule in subdivision (a) and payable pursuant to this section, that is based on the service credited during the marriage, shall be divided and paid to the member and the nonmember spouse proportionately according to the respective percentages of the member's service credit that were allocated to the member and the nonmember spouse in the court's order.

(c) The allowance increase provided under this section shall not be subject to Sections 24415 and 24417, but shall be subject to Section 22140.

SEC. 15. Section 24209 of the Education Code is amended to read:

24209. (a) Upon retirement for service following reinstatement, the member shall receive a service retirement allowance equal to the sum of both of the following:

(1) An amount equal to the monthly allowance the member was receiving immediately preceding reinstatement, exclusive of any amounts payable pursuant to Section 22714 or 22715, increased by the improvement factor that would have been applied to the allowance if the member had not reinstated.

(2) An amount calculated pursuant to Section 24202, 24202.5, 24203, 24203.5, or 24206 on service credited subsequent to the most recent reinstatement, the member's age at retirement, and final compensation.

(b) If the total amount of credited service, other than that accrued pursuant to Sections 22714, 22715, 22717, 22717.5, and 22826, is equal to or greater than 30 years, the amounts identified in paragraphs (1), for members who initially retired on or after January 1, 1999, and (2) of subdivision (a) shall be calculated pursuant to Section 24203.5.

(c) If the total amount of credited service, other than that accrued pursuant to Sections 22714, 22715, 22717, 22717.5, and 22826, is equal

to or greater than 30 years, upon retirement for service following reinstatement, a member who retired pursuant to Section 24213, and received the terminated disability allowance for the prior retirement, shall receive a service retirement allowance equal to the sum of the following:

(1) An amount based on the service credit accrued prior to the effective date of the disability allowance, the member's age at the prior retirement increased by the factor provided in Section 24203.5, and projected final compensation.

(2) An amount calculated pursuant to Section 24202, 24202.5, 24203.5, or 24206 on service credited subsequent to the reinstatement, the member's age at retirement, and final compensation.

SEC. 16. Section 24211 of the Education Code is amended to read:

24211. When a member who has been granted a disability allowance under this part after June 30, 1972, returns to employment subject to coverage under the Defined Benefit Program and performs:

(a) Less than three years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance which is the sum of the allowance calculated on service credit accrued after the termination date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable and projected final compensation, plus the greater of either of the following:

(1) A service retirement allowance calculated on service credit accrued as of the effective date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and projected final compensation excluding service credited pursuant to Sections 22717 and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), to the termination date of the disability allowance.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(b) Three or more years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance that is the greater of the following:

(1) A service retirement allowance calculated on all actual and projected service excluding service credited pursuant to Sections 22717 and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(c) The allowance shall be increased by an amount based on any service credited pursuant to Sections 22714, 22715, 22717, and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(d) If the total amount of credited service, other than projected service or service that accrued pursuant to Sections 22714, 22715, 22717, 22717.5, and 22826, is equal to or greater than 30 years, the amounts identified in subdivisions (a) and (b) shall be calculated pursuant to Sections 24203.5 and 24203.6.

SEC. 17. Section 24212 of the Education Code is amended to read:

24212. (a) If a disability allowance granted under this part after June 30, 1972, is terminated for reasons other than those specified in Section 24213 and the member does not return to employment subject to coverage under the Defined Benefit Program, the member's service retirement allowance, when payable, shall be based on projected service, excluding service credited pursuant to Sections 22717 and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820), projected final compensation, and the age of the member on the last day of the month in which the retirement allowance begins to accrue. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance excluding children's portions.

(b) The allowance shall be increased by an amount based on any service credited pursuant to Sections 22714, 22715, 22717, and 22717.5 or Chapter 14 (commencing with Section 22800) or Chapter 14.2 (commencing with Section 22820) and final compensation using compensation earnable, or projected final compensation, or a combination of both.

SEC. 18. Section 24255 of the Education Code is amended to read:

24255. (a) There is in the State Treasury a trust fund to be known as the Teachers' Replacement Benefits Program Fund. There shall be deposited directly in that fund, and not transferred from the Teachers' Retirement Fund, that portion of employer contributions determined by the board as necessary to fund the replacement benefits program.

(b) Notwithstanding Section 13340 of the Government Code, moneys in the Teachers' Replacement Benefits Program Fund are continuously appropriated without regard to fiscal years to pay benefits to members and beneficiaries of the Defined Benefit Program, and to pay related administrative expenses.

(c) The board may authorize the transfer and disbursement of funds from the Teachers' Replacement Benefits Program Fund for the purpose of carrying into effect this chapter upon the signature of either or both of its chairperson and vice chairperson or the chief executive officer or any employee of the system designated by the chief executive officer.

(d) Disbursements of money from the Teachers' Replacement Benefits Program Fund of whatever nature shall be made upon claims duly audited in the manner prescribed for the disbursement of other public funds except that, notwithstanding the foregoing, disbursements may be made to return funds deposited in the fund in error.

SEC. 19. Section 24260 of the Education Code is amended to read:

24260. (a) A replacement benefits program is hereby established under this chapter for the exclusive purpose of providing to members or their beneficiaries in accordance with subdivisions (c) and (d) that portion of the annual benefit of the member or the member's beneficiaries otherwise payable under the provisions of this part that exceeds the limitations on the dollar amount of annual benefit under Section 415 of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 415) as applicable to a governmental plan, as defined in subdivision (d) of Section 414.

(b) The replacement benefits program established by this chapter is intended to comply with the provisions of Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 415(m)).

(c) In any case in which (1) the annual benefit of the member or the member's beneficiaries for the calendar year otherwise payable under the terms of this part, as measured under the provisions of Section 415(b)(2) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 415(b)(2)) and adjusted to exclude the portion of the annual benefit attributable to employee contributions that are not ''picked up'' under Section 414(h)(2) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 414(h)(2)) or attributable to rollover contributions described in Section 415(b)(2) of the Internal Revenue Code of 1986, exceeds (2) the limitation on the dollar amount of an annual benefit applicable for the calendar year under Section 415(b)(1)(A) or subdivision (e) as applicable to a governmental plan, as defined in Section 414(d) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 414(d)), the amount of the portion of the annual benefit shall be paid to the member or the member's beneficiaries under the replacement benefit program in the manner described in subdivision (d). In no event shall the portion of the annual benefit from the replacement benefits program be payable from the assets of the Teachers' Retirement Fund. In no event shall the replacement benefits program provide to the member or the member's beneficiaries, directly or indirectly, any election to defer compensation.

(d) Any portion of the annual benefit of a member or the member's beneficiaries for the year described in subdivision (c) shall be payable, at the same time and in the same form as the remainder of the annual benefit and subject to the terms and conditions of this part except as otherwise provided under this section, from the proceeds of the employer contributions due under Section 22950, and, notwithstanding Section 22956, prior to the deposit of those employer contributions in the State Treasury to the Teachers' Retirement Fund. Upon receipt of the warrants for the employer contributions as described in Section 23001, the board shall retain and place in the Teachers' Replacement Benefits Program Fund only the amounts of employer contributions as are necessary for the exclusive purpose of paying currently the monthly installment next due of the portion of the annual benefit payable from the replacement benefits program to the member or the member's beneficiaries as well as any administrative expenses associated with the replacement benefits program. Amounts shall not be accumulated in the Teachers' Replacement Benefits Program Fund for the payment of future benefits, and a member or the member's beneficiaries who are to receive the portion of his or her annual benefit under the replacement benefits program shall have no entitlement to amounts in the Teachers' Replacement Benefits Program Fund until distributed to him or her as a benefit.

(e) The portion of the annual benefit payable under the replacement benefits program shall be subject to withholding for any applicable income or employment taxes.

(f) The administrative expenses of the replacement benefits program may include the employer portion of the Medicare payroll tax on the replacement benefits program payments of a retired member who is required to contribute to Medicare. The employee portion of the Medicare payroll tax on the replacement benefits program payments to retired members in this program who are required to contribute to Medicare shall be withheld from the replacement benefits program payments to the retired member.

(g) The board may by plan amendment amend the terms of the replacement benefits program established under this section as appropriate to comply with applicable federal or state law.

(h) All references to sections of the Internal Revenue Code of 1986 are to those sections as are amended from time to time or their successor sections.

SEC. 20. Section 24300.5 of the Education Code is amended to read:

24300.5. An option beneficiary who is receiving an allowance pursuant to the option elected by the member may designate a beneficiary to receive any allowance that has accrued and is unpaid, and

any remaining balance of the retired member's accumulated retirement contributions payable pursuant to Section 23881, upon the death of the option beneficiary.

SEC. 21. Section 24307 of the Education Code is amended to read:

24307. (a) A member who qualifies to apply for retirement under Section 24201 or 24203 may make a preretirement election of an option, as provided in Section 24300 without right of revocation or change after the effective date of retirement, except as provided in this part. The preretirement election of an option shall become effective on the date a properly executed form prescribed by the system is signed, providing the election is received in the system's office in Sacramento within 30 days after the date of signature.

(b) A member who makes a preretirement election of an Option 2, Option 3, Option 4, Option 5, Option 6, or Option 7 may subsequently make a preretirement election of Option 8. The member may retain the same option and the same option beneficiary as named in the prior preretirement election, as an option under Option 8.

(c) Upon the member's death prior to the effective date of retirement, the beneficiary who was designated under the option elected and who survives shall receive an allowance calculated under the option, under the assumption that the member retired for service pursuant to Chapter 27 (commencing with Section 24201) on the date of death. The payment of the allowance to the option beneficiary shall be in lieu of the family allowance provided in Section 23804, the payment provided in paragraph (1) of subdivision (a) of Section 23802, the survivor benefit allowance provided in Section 23854, and the payment provided in subdivisions (a) and (b) of Section 23852, except that if the beneficiary dies before all of the member's accumulated retirement contributions are paid, the balance, if any, shall be paid to the estate of the person last receiving or entitled to receive the allowance. The accumulated annuity deposit contributions and the death payment provided in Sections 23801 and 23851 shall be paid to the beneficiary in a lump sum.

(d) If the member subsequently retires for service, and the elected option has not been canceled pursuant to Section 24309, a modified service retirement allowance computed under Section 24300 and the option elected shall be paid.

(e) The amount of the service retirement allowance prior to applying the option factor shall be calculated as of the earlier of the member's age at death before retirement or age on the last day of the month in which the member requested service retirement be effective. The modification of the service retirement allowance under the option elected shall be based on the ages of the member and the beneficiary designated under the option, as of the date the election was signed.

(f) A member who terminates the service retirement allowance pursuant to Section 24208 shall not be eligible to file a preretirement election of an option until one calendar year elapses from the date the allowance is terminated.

(g) The system shall inform members who are qualified to make a preretirement election of an option, through the annual statements of account, that the election of an option can be made.

(h) This section shall become operative on January 1, 2000.

SEC. 22. Section 24402 of the Education Code is amended to read:

24402. (a) Service retirement allowances, disability allowances, disability retirement allowances, family allowances, and survivor benefit allowances payable pursuant to this part shall be increased by application of the benefit improvement factor.

(b) Allowances payable to beneficiaries on account of options elected under Section 24300, 24301, or 24307 shall be increased by application of the improvement factor. This factor shall be applicable on the same date when it would have been applied to the allowance of the deceased person.

(c) The benefit improvement factor shall not be applied to an annuity that is the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of the member's account on the effective date of a service or disability retirement.

SEC. 23. Section 24404 of the Education Code is amended to read:

24404. (a) Effective July 1, 1973, the benefits of persons eligible for survivor benefits pursuant to former Section 14186 as it read on June 30, 1972, shall be increased as follows:

(1) Those eligible for ninety dollars ($90) per month shall be increased to one hundred five dollars ($105) per month.

(2) Those eligible for one hundred eighty dollars ($180) per month shall be increased to two hundred ten dollars ($210) per month.

(3) Those eligible for two hundred fifty dollars ($250) per month shall be increased to two hundred ninety-five dollars ($295) per month.

(b) These benefits shall be subject to the provisions of Sections 22140 and 24403 with the first annual improvement to occur on September 1, 1974, and annually thereafter.

SEC. 24. Section 24410.6 of the Education Code is amended to read:

24410.6. (a) Notwithstanding any provision of this part, including, but not limited to, subdivision (e) of Section 22664, and except as provided in subdivisions (b) and (c), the annual allowance payable on the effective date of this section to a retired member, an option beneficiary, or a surviving spouse receiving an allowance pursuant to either Section 23805 or 23855 shall not be less than the amount identified in the following schedule for the number of years of the member's credited

service under the Defined Benefit Program at the time of the member's retirement, disability, or death, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, after the application of all allowances and allowance increases authorized by this part, including those specified in Sections 24412 and 24415, as those sections read on December 31, 2000, and excluding increases authorized by Section 24410.7 and annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions:

| | |
|---|---|
| 20 years of credited service | $15,000 |
| 21 years of credited service | $15,500 |
| 22 years of credited service | $16,000 |
| 23 years of credited service | $16,500 |
| 24 years of credited service | $17,000 |
| 25 years of credited service | $17,500 |
| 26 years of credited service | $18,000 |
| 27 years of credited service | $18,500 |
| 28 years of credited service | $19,000 |
| 29 years of credited service | $19,500 |
| 30 years or more of credited service | $20,000 |

(b) Notwithstanding subdivision (a), the amount identified in the schedule in subdivision (a) shall be reduced:

(1) By 50 percent for a beneficiary receiving an allowance under Option 3 or Option 7.

(2) By one-third for an option beneficiary receiving an allowance under Option 4 after the death of the member or for a member receiving an allowance under Option 4 after the death of the option beneficiary.

(3) By 50 percent for an option beneficiary receiving an allowance under Option 5 after the death of the member or for a member receiving an allowance under Option 5 after the death of the option beneficiary.

(4) By a percentage equal to 100 percent minus the percentage of the member's modified allowance received by the option beneficiary for each option beneficiary receiving an allowance under Option 8.

(5) By 60 percent for a surviving spouse receiving an allowance pursuant to subdivision (a) of Section 23805.

(6) By 50 percent for a surviving spouse receiving an allowance pursuant to subdivision (c) of Section 23805 or Section 23855.

(c) A benefit shall be paid pursuant to this section if both of the following apply:

(1) The retired member, the option beneficiary, or the surviving spouse had an allowance payable on January 1, 2000, and was not eligible to receive a benefit pursuant to Section 24410.5.

(2) The retired member or the member whose service was the basis of the allowance payable to the option beneficiary or surviving spouse was one of the following:

(A) A member who retired prior to the age of 55 years, provided the minimum allowance specified in subdivision (a) shall be reduced to an amount equal to that minimum allowance multiplied by the ratio of the percentage of final compensation per year of credited service on which the member's initial allowance was based to 1.4.

(B) A member who was paid a retirement allowance pursuant to Section 24213, if the member's credited service, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, was less than 20 years but whose projected service to normal retirement age, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, was equal to or greater than 20 years, provided that the minimum allowance payable shall be based on 20 years of credited service.

(C) A member who retired as an inactive member.

(D) A member who retired prior to March 21, 1974, with 19.5 years or more of credited service, provided that the minimum allowance payable shall be based on 20 years of credited service.

(E) A member who retired on or after March 21, 1974, and prior to January 1, 2000, and whose credited service, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, was less than 20 years, but whose credited service, excluding service credited pursuant to Sections 22714, 22715, and 22826, but including service credited pursuant to Section 22717, was equal to or greater than 20 years, provided that the minimum allowance payable shall be based on 20 years of credited service.

(F) A member whose credited service, excluding service credited pursuant to Sections 22714, 22715, and 22826, but including credited service that a court has ordered be awarded to the member's nonmember spouse pursuant to Section 22652, equaled at least 20 years, provided that the amount payable to the member pursuant to this section shall be based on the amount of service credited to the member, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, and the amount awarded to the nonmember spouse, and further provided that the minimum allowance specified in subdivision (a) shall be reduced to an amount equal to that minimum allowance multiplied by the ratio of (i) the amount of service credited to the member, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, to (ii) the sum of the amount of service credited to the member, excluding service credited pursuant to Sections 22714, 22715, 22717, and 22826, and the amount awarded to the nonmember spouse.

(d) A benefit shall be paid pursuant to this section to a retired member receiving a benefit pursuant to Section 24410.5 if (1) the member meets the criteria of subparagraph (F) of paragraph (2) of subdivision (c), and (2) the allowance payable under that subparagraph, after the application of all allowances and allowance increases authorized by this part, including those specified in Sections 24412 and 24415, is greater than the allowance payable under Section 24410.5, after the application of all allowances and allowance increases authorized by this part, including those specified in Sections 24412 and 24415.

(e) A retired member, option beneficiary, or surviving spouse subject to this section shall receive the annual minimum allowance pursuant to this section unless the system receives in writing, on a form prescribed by the system, notification from the member, option beneficiary, or surviving spouse of his or her election not to receive the increase provided under this section.

(f) Benefits payable under this section shall be initially paid by the system on or before September 1, 2001.

SEC. 25. Section 25011 of the Education Code is amended to read:

25011. (a) A member may elect to receive the retirement benefit as an annuity payable in monthly installments, provided the balance of credits in the member's Defined Benefit Supplement account on the date the retirement benefit becomes payable equals at least three thousand five hundred dollars ($3,500) after any lump-sum payments have been made from the account.

(b) If the member elects to receive the retirement benefit as an annuity, the member shall elect one of the following forms of payment:

(1) A single life annuity without a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the member if the member elected to receive the retirement benefit in a lump-sum payment. Upon the death of the member, no other benefit shall be payable to the member's beneficiary under the Defined Benefit Supplement Program.

(2) A single life annuity with a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the member if the member elected to receive the retirement benefit in a lump-sum payment. Upon the death of the member, an amount equal to the remaining balance, if any, of credits transferred from the member's Defined Benefit Supplement account to the Annuitant Reserve shall be returned in a lump-sum payment to the member's beneficiary.

(3) A 100-percent joint and survivor annuity with a ''pop-up'' feature. This form of payment is the actuarial equivalent of the lump-sum payment modified to be payable over the combined lives of the member and the member's annuity beneficiary. Upon the death of the member, the same monthly amount that was payable to the member shall

be paid monthly to the member's surviving annuity beneficiary. If the annuity beneficiary predeceases the member, the annuity payable to the member shall be the single life annuity with a cash refund feature that would have been payable had the member selected that form of payment at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(4) A 50-percent joint and survivor annuity with a ''pop-up'' feature. This form of payment is the actuarial equivalent of the lump-sum payment modified to be payable over the combined lives of the member and the member's annuity beneficiary. Upon the death of the member, one-half of the monthly amount that was payable to the member shall be paid monthly to the member's surviving annuity beneficiary. If the annuity beneficiary predeceases the member, the annuity payable to the member shall be the single life annuity with a cash refund feature that would have been payable had the member selected that form of payment at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(5) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account on the date the retirement benefit becomes payable. The annuity shall be payable in whole year increments over a period of years specified by the member, from a minimum of three years to a maximum of 10 years. However, the annuity period shall not exceed the life expectancy of the member, or the life expectancy of the member and the member's annuity beneficiary. If the member's death occurs prior to the end of the period certain, the remaining balance of payments shall be paid to the member's annuity beneficiary pursuant to Section 25022.

SEC. 26. Section 25014 of the Education Code is amended to read:

25014. (a) If a member reinstates from service retirement under this part, payment of a retirement annuity based on the balance of credits that was transferred from the member's Defined Benefit Supplement account to the Annuitant Reserve shall terminate. The member's Defined Benefit Supplement account shall be credited with the actuarial equivalent of the member's annuity as of the date the annuity is terminated and the Annuitant Reserve shall be reduced by the amount credited to the member's account.

(b) If the member subsequently retires again, an annuity or lump-sum payment based on the remaining balance of credits in the member's Defined Benefit Supplement account at the time of the subsequent

retirement shall become payable pursuant to Section 24202.5 and the balance of credits in the member's Defined Benefit Supplement account shall be transferred to the Annuitant Reserve or paid to the member in the form of a lump-sum payment.

SEC. 27. Section 25015 of the Education Code is amended to read:

25015. (a) If a member elects to receive a benefit payable under the Defined Benefit Supplement Program as a joint and survivor annuity, the designation of the beneficiary made pursuant to Section 24300 or 24301 shall apply to the benefit payable under this chapter. The annuity beneficiary designation shall not be changed after the date the benefit becomes payable to the member, except as provided in Chapter 12 (commencing with Section 22650).

(b) If the member designates multiple annuity beneficiaries in the designation of beneficiary made pursuant to Section 24300 or 24301, the percentage of the annuity payable to each annuity beneficiary upon the death of the member specified in that designation shall apply to the benefit payable under this chapter. The annuity amount payable to the member during his or her lifetime shall be modified to be payable over the combined lives of the member and the annuity beneficiary or beneficiaries.

(c) If the member predeceases an annuity beneficiary, the annuity beneficiary may designate a payee to receive an amount that may be payable in a lump-sum pursuant to Section 25023 upon the death of the annuity beneficiary.

SEC. 28. Section 25018 of the Education Code is amended to read:

25018. (a) A member may elect to receive the disability benefit as an annuity, payable in monthly installments, provided the balance of credits in the member's Defined Benefit Supplement account on the date the disability benefit becomes payable equals at least three thousand five hundred dollars ($3,500) after any lump-sum payment has been made from this account.

(b) If the member elects to receive the disability benefit as an annuity, the member shall elect one of the following forms of payment:

(1) A single life annuity without a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the member if the member elected to receive the disability benefit in a lump-sum payment. Upon the death of the member, no other benefit shall be payable to the member's beneficiary under the Defined Benefit Supplement Program.

(2) A single life annuity with a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the member if the member elected to receive the disability benefit in a lump-sum payment. Upon the death of the member, an amount equal to the remaining balance of credits, if any, transferred from the member's

Defined Benefit Supplement account to the Annuitant Reserve shall be returned in a lump-sum payment to the member's beneficiary.

(3) A 100-percent joint and survivor annuity with a ''pop-up'' feature. This form of payment is the actuarial equivalent of the lump-sum payment modified to be payable over the combined lives of the member and the member's annuity beneficiary. Upon the death of the member, the same monthly amount that was payable to the member shall be paid monthly to the member's surviving annuity beneficiary. If the annuity beneficiary predeceases the member, the annuity payable to the member shall be the single life annuity with a cash refund feature that would have been payable had the member selected that form of payment at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(4) A 50-percent joint and survivor annuity with a ''pop-up'' feature. This form of payment is the actuarial equivalent of the lump-sum payment modified to be payable over the combined lives of the member and the member's annuity beneficiary. Upon the death of the member, one-half of the monthly amount that was payable to the member shall be paid monthly to the member's surviving annuity beneficiary. If the annuity beneficiary predeceases the member, the annuity payable to the member shall be the single life annuity with a cash refund feature that would have been payable had the member selected that form of payment at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(5) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account on the date the disability benefit becomes payable. The annuity shall be payable in whole year increments over a period of years specified by the member, from a minimum of three years to a maximum of 10 years. However, the annuity period shall not exceed the life expectancy of the member, or the life expectancy of the member and the member's annuity beneficiary. If the member's death occurs prior to the end of the period certain, the remaining balance of payments shall be paid to the member's annuity beneficiary pursuant to Section 25022.

SEC. 29. Section 25019 of the Education Code is amended to read:

25019. (a) If a member's disability allowance or disability retirement allowance under this part is terminated, payment of a disability annuity based on the balance of credits transferred from the member's Defined Benefit Supplement account to the Annuitant

Reserve also shall terminate. The member's Defined Benefit Supplement account shall be credited with the actuarial equivalent of the member's annuity as of the date the annuity is terminated and the Annuitant Reserve shall be reduced by the amount credited to the member's account.

(b) If a disability allowance or a service or disability retirement allowance subsequently becomes payable again, an annuity or lump-sum payment based on the remaining balance of credits in the member's Defined Benefit Supplement account at the time of the subsequent disability or service or disability retirement becomes payable and the balance of credits in the member's Defined Benefit Supplement account shall be transferred to the Annuitant Reserve or paid to the member in the form of a lump-sum payment.

SEC. 30. Section 25021 of the Education Code is amended to read:

25021. (a) A beneficiary, other than an entity, may elect to receive the final benefit payable under the Defined Benefit Supplement Program as an annuity payable in monthly installments provided the balance of credits in the member's Defined Benefit Supplement account equals at least three thousand five hundred dollars ($3,500).

(b) A beneficiary who elects to receive an annuity shall elect one of the following forms of payment:

(1) A single life annuity without a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the beneficiary if the beneficiary elected to receive the final benefit in a lump-sum payment. The annuity shall cease to be payable upon the death of the beneficiary, and no other benefit shall be payable under the Defined Benefit Supplement Program on account of the death of the member or the member's beneficiary.

(2) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the balance of credits in the member's Defined Benefit Supplement account on the date of the member's death. The annuity shall be payable in whole year increments over a period of years specified by the beneficiary, from a minimum of three years to a maximum of 10 years, but not to exceed the life expectancy of the beneficiary. The beneficiary may designate a payee to receive the remaining balance of payments if the beneficiary's death occurs prior to the end of the period certain.

SEC. 31. The heading of Article 6 (commencing with Section 25024) of Chapter 38 of Part 13 of Division 1 of the Education Code is amended and renumbered to read:

Article 7. Termination Benefits

SEC. 32. Section 25024 of the Education Code is amended to read:

25024. (a) Upon the termination of all employment to perform creditable service subject to coverage under the plan for a reason other than retirement, disability, or death, a member shall be eligible for a termination benefit under the Defined Benefit Supplement Program. The member's employer, or employers if the member has multiple employers, shall certify on a form prescribed by the system that the member's employment has been terminated.

(b) A member shall submit an application for a termination benefit on a form prescribed by the system. If a member submits an application for a refund of contributions under the Defined Benefit Program, pursuant to Section 23103, that application shall also be deemed an application for a termination benefit. If a member cancels the application for a refund of contributions under the Defined Benefit Program, the application for the termination benefit shall also be deemed to have been cancelled.

(c) The termination benefit shall be a lump-sum payment that is equal to the balance of credits in the member's Defined Benefit Supplement account.

(d) Upon distribution of the termination benefit, no further benefit shall be payable to the member or the member's beneficiary under the Defined Benefit Supplement Program.

(e) A partial distribution of the balance of credits in a member's Defined Benefit Supplement account shall not be made, except as provided in Section 25009, 25015, 25016, or 25022.

SEC. 33. Section 25026 of the Education Code is repealed.

SEC. 34. Section 25921 is added to the Education Code, to read:

25921. ''Employer'' means the state or any agency or political subdivision thereof for which creditable service subject to coverage by the plan, as defined in Section 22155.5, is performed.

SEC. 35. Section 25925 of the Education Code is amended to read:

25925. ''Member'' means a current or retired employee of an employer, as defined in Section 25921.

SEC. 36. Section 25926 is added to the Education Code, to read:

25926. ''School year'' means the fiscal year or the academic year.

SEC. 37. Section 25930 of the Education Code is amended to read:

25930. There is in the State Treasury a special trust fund to be known as the Teachers' Health Benefits Fund. There shall be deposited in the fund the employer contributions required under subdivision (c) of Section 22950, income on investments, other interest income, income from fees and penalties, premiums paid by members, donations, legacies, bequests made to the fund and accepted by the board, and any other amounts provided by this part. Notwithstanding Section 13340 of the Government Code, the proceeds of the fund are hereby continuously appropriated without regard to fiscal year for purposes of this part. The

design and administration of the fund and any program financed from the fund shall comply with Section 115 of Title 26 of the United States Code.

SEC. 38. The heading of Chapter 4 (commencing with Section 25940) of Part 13.5 of Division 1 of the Education Code is amended to read:

CHAPTER 4. MEDICARE PREMIUM PAYMENT PROGRAM

SEC. 39. Section 25940 of the Education Code is amended to read:

25940. (a) Effective July 1, 2001, the system shall pay to the federal Health Care Financing Administration the premiums associated with Medicare Part A for retired members described in this section.

(b) This section shall apply only to a retired member of the Defined Benefit Program who: (1) retired prior to January 1, 2001, (2) is not eligible for Medicare Part A without payment of a premium, (3) is at least 65 years of age, and (4) enrolled in Medicare Parts A and B.

(c) The board may extend eligibility for the payments described in this section to members of the Defined Benefit Program who meet the requirements of subdivision (d) and who retire on or after January 1, 2001, within a school year specified by the board, if the board finds that the cost of the payments for members retiring during the specified school year may be paid within the anticipated resources available in the fund, as determined by the actuarial valuation of the program established by this chapter. Any extension of eligibility to members who retire on or after January 1, 2001, shall be provided equally to any member who meets the requirements of subdivision (d) and retires during the school year specified by the board.

(d) (1) Eligibility for the payments described in this section pursuant to subdivision (c) shall be limited to members of the Defined Benefit Program who retire from an employer that either: (A) completed a division pursuant to Section 22156 of the Government Code prior to January 1, 2001; or (B) completed or is conducting a division pursuant to that section on or after January 1, 2001, and, if the member was less than 58 years of age at the time of the division, the member elected to be covered by Medicare.

(2) For purposes of paragraph (1), a division occurs during the 10-day period during which the member has the opportunity to elect to be covered by Medicare pursuant to Section 22156 of the Government Code.

(3) This subdivision shall not apply to a member who retires from a district that either (A) as of January 1, 2001, had no members who were less than 58 years of age and who were hired prior to April 1, 1986, or (B) was created pursuant to a formation or a reorganization on or after April 1, 1986, and prior to January 1, 2001.

(e) The amount paid to the federal Health Care Financing Administration pursuant to this section shall include any surcharges applicable to enrollment in Medicare Part A or Part B by members who retired prior to January 1, 2001, and who enrolled in Medicare Parts A and B after the age of 65 years and prior to July 1, 2001. If the system pays the Part A premium and Part B surcharges on behalf of a member and that member later becomes eligible for Part A coverage without payment of a premium, the system shall continue to pay any applicable Part B surcharges on behalf of that member. The board may require a member on whose behalf a surcharge would be paid pursuant to this subdivision to authorize the system to deduct the Part B premium from the member's retirement allowance as a condition of having the system pay the Part A premium pursuant to this section.

SEC. 40. Section 26400 of the Education Code is amended to read:

26400. (a) A person employed to perform creditable service for less than 50 percent of the full-time equivalent for the position shall become a participant on the later of the first day on which creditable service is performed for an employer that provides the Cash Balance Benefit Program or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program, provided the person is not subject to mandatory membership in the Defined Benefit Program.

(b) If the employer's governing board's action to provide the Cash Balance Benefit Program gives employees the right to elect coverage under social security or an alternative retirement plan offered by the employer in addition to the Cash Balance Benefit Program, the employee may elect within 60 calendar days of the later of the first day on which creditable service is performed, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program to be covered by social security or to participate in the alternative retirement plan in lieu of participating in the Cash Balance Benefit Program. Any election shall not preclude an employee from participating in the Cash Balance Benefit Program at a later date so long as the Cash Balance Benefit Program is provided by the employer and the employee is eligible to participate in the Cash Balance Benefit Program.

(c) If subdivision (b) is applicable, the employer shall inform employees pursuant to subdivision (c) of Section 26300 of their right to make an election and the election shall be made on a form prescribed by the system and filed with the employer. The election shall become effective on the later of the first day on which creditable service is performed or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(d) If the participant's basis of employment with an employer that provides the Cash Balance Benefit Program changes to employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, contributions to the Cash Balance Benefit Program on behalf of the participant shall no longer be made and creditable service performed for that employer and all other employers shall be subject to coverage by the Defined Benefit Program as of the first day of the pay period in which the change in the participant's basis of employment occurred.

SEC. 41. Section 26401 of the Education Code is amended to read:

26401. (a) A member of the Defined Benefit Program who is employed to perform creditable service for less than 50 percent of the full-time equivalent for the position for an employer that provides the Cash Balance Benefit Program may elect to become a participant for creditable service subject to coverage under the Cash Balance Benefit Program for that employer provided that the creditable service is not performed for the same employer with whom the member is also subject to mandatory membership in the Defined Benefit Program.

(b) The election shall be made on a form prescribed by the system and shall be filed with the employer within 60 calendar days of the later of the first day of employment with an employer that provides the Cash Balance Benefit Program, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(c) Employers shall make available to employees specified in subdivision (a) information and forms provided by the system for making an election regarding participation, and shall maintain the written election by the employee in employer files. The election shall become effective on the first day of the pay period following the pay period in which the election is made.

(d) If an election is made pursuant to subdivision (a) and the participant's basis of employment with that employer changes to employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, contributions to the Cash Balance Benefit Program on behalf of the participant shall no longer be made and creditable service performed for that employer shall be subject to coverage under the Defined Benefit Program as of the first day of the pay period in which the change in the participant's basis of employment occurred.

SEC. 42. Section 26402 of the Education Code is amended to read:

26402. (a) A member of the Defined Benefit Program who is employed by an employer on a full-time basis to perform creditable service subject to coverage under the Defined Benefit Program, may

participate in the Cash Balance Benefit Program for creditable service performed for a different employer if the different employer provides the Cash Balance Benefit Program and would otherwise contribute to social security or an alternative retirement plan on behalf of the member for that service.

(b) This section shall become inoperative on July 1, 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. 43. Section 26807 of the Education Code is amended to read:

26807. (a) Upon application for a retirement benefit under this part, the participant may elect to receive the retirement benefit in the form of an annuity, provided the sum of the employee account and employer account equals or exceeds three thousand five hundred dollars ($3,500).

(b) If the participant elects to receive the retirement benefit as an annuity, the participant shall elect one of the following forms of payment:

(1) A single life annuity without a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the participant if the participant elected to receive the retirement benefit in a lump-sum payment. This benefit shall be payable for the life of the participant. Upon the death of the participant, no other benefit shall be payable to any beneficiary under this part.

(2) A single life annuity with a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the participant if the participant elected to receive the retirement benefit in a lump-sum payment. This benefit shall be payable for the life of the participant and any balance remaining upon the death of the participant shall be payable in a lump sum to the participant's beneficiary.

(3) A 100-percent joint and survivor annuity with a ''pop-up'' feature. This form of payment is the actuarial equivalent of the amount that would be payable to the participant if the participant elected to receive the retirement benefit in a lump-sum payment, modified to be payable over the combined lives of the participant and the participant's annuity beneficiary. Upon the death of the participant, the monthly amount that was payable to the participant shall be paid monthly to the participant's annuity beneficiary. If the annuity beneficiary predeceases the participant, the annuity payable to the participant shall be the single life annuity with a cash refund feature that would have been payable had the participant selected that form of payment at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(4) A 50-percent joint and survivor annuity with a ''pop-up'' feature. This form of payment is the actuarial equivalent of the amount that would be payable to the participant if the participant elected to receive the retirement benefit in a lump-sum payment, modified to be payable over the combined lives of the participant and the participant's annuity beneficiary. Upon the death of the participant, one-half of the monthly amount that was payable to the participant shall be paid monthly to the participant's annuity beneficiary. If the annuity beneficiary predeceases the participant, the annuity payable to the participant shall be the single life annuity with a cash refund feature that would have been payable had the participant selected that form of payment at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(5) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the sum of the balance of the employee account and the employer account on the date the retirement benefit becomes payable. The annuity shall be payable in whole year increments over a period of years specified by the participant, from a minimum of three years to a maximum of 10 years. However, the annuity period shall not exceed the life expectancy of the participant or of the participant and the participant's annuity beneficiary. If the participant's death occurs prior to the end of the period certain, the remaining balance of payments shall be paid to the participant's annuity beneficiary pursuant to Section 27007.

SEC. 44. Section 26906 of the Education Code is amended to read:

26906. (a) Upon application for a disability benefit under this part, the participant may elect to receive the disability benefit in the form of an annuity provided the sum of the employee account and employer account equals or exceeds three thousand five hundred dollars ($3,500).

(b) If the participant elects to receive the disability benefit as an annuity, the participant shall elect one of the following forms of payment:

(1) A single life annuity without a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the participant if the participant elected to receive the disability benefit in a lump-sum payment. This benefit shall be payable for the life of the participant. Upon the death of the participant, no other benefit shall be payable to any beneficiary under this part.

(2) A single life annuity with a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the participant if the participant elected to receive the disability benefit in a lump-sum payment. This benefit shall be payable for the life of the

participant and any balance remaining upon the death of the participant shall be payable in a lump sum to the participant's beneficiary.

(3) A 100-percent joint and survivor annuity with a ''pop-up'' feature. This form of payment is the actuarial equivalent of the amount that would be payable to the participant if the participant elected to receive the disability benefit in a lump-sum payment, modified to be payable over the combined lives of the participant and the participant's annuity beneficiary. Upon the death of the participant, the monthly amount that was payable to the participant shall be paid monthly to the participant's annuity beneficiary. If the annuity beneficiary predeceases the participant, the annuity payable to the participant shall be the single life annuity with a cash refund feature that would have been payable had the participant selected that form of payment at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(4) A 50-percent joint and survivor annuity with a ''pop-up'' feature. This form of payment is the actuarial equivalent of the amount that would be payable to the participant if the participant elected to receive the disability benefit in a lump-sum payment, modified to be payable over the combined lives of the participant and the participant's annuity beneficiary. Upon the death of the participant, one-half of the monthly amount that was payable to the participant shall be paid monthly to the participant's annuity beneficiary. If the annuity beneficiary predeceases the participant, the annuity payable to the participant shall be the single life annuity with a cash refund feature that would have been payable had the participant selected that form of payment at the commencement of the benefit. That single life annuity shall be payable as of the day following the date of the annuity beneficiary's death upon receipt by the system of proof of the annuity beneficiary's death.

(5) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the sum of balance of the employee account and the employer account on the date the disability benefit becomes payable. The annuity shall be payable in whole year increments over a period of years specified by the participant, from a minimum of three years to a maximum of 10 years. However, the annuity period shall not exceed the life expectancy of the participant or of the participant and the participant's annuity beneficiary. If the participant's death occurs prior to the end of the period certain, the remaining balance of payments shall be paid to the participant's annuity beneficiary pursuant to Section 27007.

SEC. 45. Section 26911 of the Education Code is amended to read:

26911. If a participant who is receiving a disability annuity under this part becomes reemployed prior to 60 years of age to perform

creditable service subject to coverage by the Cash Balance Benefit Program or the Defined Benefit Program, the disability annuity shall be terminated. The participant's employee account and employer account shall be credited with the actuarial equivalent of the participant's annuity as of the date of reemployment and the Annuitant Reserve shall be reduced by the amount credited to those accounts.

SEC. 46. Section 27004 of the Education Code is repealed.

SEC. 47. Section 27004 is added to the Education Code, to read:

27004. (a) A beneficiary, other than an entity, may elect to receive the final benefit payable under the Cash Balance Benefit Program as an annuity payable in monthly installments provided that sum of the employee account and the employer account equals at least three thousand five hundred dollars ($3,500).

(b) A beneficiary who elects to receive an annuity pursuant to this section shall elect one of the following forms of payment:

(1) A single life annuity without a cash refund feature. This form of payment is the actuarial equivalent of the amount that would be payable to the beneficiary if the beneficiary elected to receive the final benefit in a lump-sum payment. This benefit shall be payable for the life of the beneficiary. Upon the death of the beneficiary, no other benefit shall be payable under this part on account of the death of the participant or the beneficiary.

(2) A period certain annuity. This form of payment is an annuity equal to the actuarial equivalent of the sum of the balance of the employee account and the employer account on the date of the participant's death. The annuity shall be payable in whole year increments over a period of years specified by the beneficiary, from a minimum of three years to a maximum of 10 years. However, the annuity period shall not exceed the life expectancy of the beneficiary. The beneficiary may designate a payee to receive the remaining balance of payments if the beneficiary dies prior to the end of the period certain.

SEC. 48. Section 27007 of the Education Code is amended to read:

27007. (a) If the participant died while receiving an annuity under this part, the death benefit shall be payable in accordance with the terms of the annuity elected by the participant.

(b) Upon the death of a participant who elected a single life annuity with a cash refund feature under this part, any balance remaining in the participant's employee account and employer account shall be payable in a lump sum to the beneficiary.

(c) Upon the death of a participant who elected a single life annuity without a cash refund feature under this part, no death benefit shall be payable.

(d) Upon the death of a participant who elected a joint and survivor annuity under this part, the annuity shall continue for life to the surviving

beneficiary under the joint and survivor option. If the beneficiary under the joint and survivor option has predeceased the participant, no death benefit shall be payable.

(e) Upon the death of a participant who elected a period certain annuity under this part prior to the completion of annuity payments due the participant, the remaining balance of payments shall be paid to the beneficiary designated by the participant.

SEC. 49. Section 27008 of the Education Code is amended to read:

27008. Upon the death of a beneficiary who was receiving an annuity under this part due to the death of a participant, payment shall be made as follows:

(a) Upon the death of a beneficiary under a joint and survivor option, no amount shall be payable.

(b) Upon the death of a beneficiary who elected a single life annuity without a cash refund feature, no amount shall be payable.

(c) Upon the death of a beneficiary who was receiving a period certain annuity, the actuarial equivalent of the remaining balance of payments shall be paid in a lump sum to the estate of the beneficiary unless the beneficiary designated a payee to receive the remaining balance of payments as provided in Section 27004.

SEC. 50. Section 22878.2 of the Government Code is amended to read:

22878.2. (a) A school or agency may by resolution filed with the board deem all permanent or regular employees, except members or participants of the State Teachers' Retirement Plan, who have an appointment of six months or longer but who are employed on a less than half-time basis, to be employees subject to this part.

(b) An agency or school with employees who are members or participants of the State Teachers' Retirement Plan may by resolution filed with the board deem any of the following to be employees subject to this part:

(1) Regular, permanent, probationary, or temporary employees or substitutes who have an appointment for a semester, or for six months, or for half of the school year or longer, but are employed on a less than half-time basis.

(2) Substitutes who have an appointment for 100 days or more in the school year.

SEC. 51. Section 22878.3 of the Government Code is amended to read:

22878.3. As used in this part, the term ''annuitant'' shall include:

(a) A family member of a deceased retired member or participant of the State Teachers' Retirement Plan who retired within 120 days of separation from employment, and who at the time of his or her death, was receiving a retirement allowance that did not provide for a survivor

allowance to family members and who elects coverage as an annuitant prior to January 1, 2003. This subdivision shall not apply to any family member of a retired member or participant of the State Teachers' Retirement Plan who retired on or after January 1, 2003, from a school contracting under this part prior to January 1, 2001.

(b) A family member of a deceased retired member or participant of the State Teachers' Retirement Plan who retired within 120 days of separation from employment, who retired before the member's or participant's school elected to contract for health benefit coverage under this part, and who, at the time of his or her death, was receiving a retirement allowance that did not provide for a survivor allowance to family members and who elects coverage as an annuitant within one calendar year from the date that the member's or participant's school elected to contract for health benefit coverage under this part.

SEC. 52. 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 a section that is amended, amended and renumbered, added, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act.

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## CHAPTER 804

An act to amend Section 1776 of, and to add Section 1771.2 to, the Labor Code, relating to public works.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 1771.2 is added to the Labor Code, to read:

1771.2. A joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) may bring an action in any court of competent jurisdiction against an employer that fails to pay the prevailing wage to its employees, as required by this article. This action shall be commenced not later than 180 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 180 days after acceptance of the public work, whichever last occurs.

SEC. 2. Section 1776 of the Labor Code, as added by Section 4 of Chapter 757 of the Statutes of 1997, is amended to read:

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated

to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fee and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4, Division 3, Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

(j) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 3. Section 1776 of the Labor Code, as amended by Section 3 of Chapter 757 of the Statutes of 1997, is amended to read:

1776. (a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) Each contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social

security number. The name and address of the contractor awarded the contract or performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. These stipulations shall fix the responsibility for compliance with this section on the prime contractor.

(i) The director shall adopt rules consistent with the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4, Division 3, Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

(j) This section shall become operative January 1, 2003.

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## CHAPTER 805

An act to amend Sections 3543 and 3546 of the Government Code, relating to school employees.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 3543 of the Government Code is amended to read:

3543. (a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. If the exclusive representative of a unit provides notification, as specified by subdivision (a) of Section 3546, public school employees who are in a unit for which an exclusive representative has been selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:

(1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.

(2) The employees may negotiate either of the two forms of organizational security described in subdivision (i) of Section 3540.1.

(b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

SEC. 2. Section 3546 of the Government Code is amended to read:

3546. (a) Notwithstanding any other provision of law, upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. Thereafter, the employee shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative.

Agency fee payers shall have the right, pursuant to regulations adopted by the Public Employment Relations Board, to receive a rebate or fee reduction upon request, of that portion of their fee that is not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d) (1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any collective bargaining agreement in effect on or after January 1, 2001.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

(e) The recognized employee organization shall indemnify and hold the public school employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the school district's compliance with this section. The recognized employee organization shall have the exclusive right to determine whether any such action or proceeding shall

or shall not be compromised, resisted, defended, tried, or appealed. This indemnification and hold harmless duty shall not apply to actions related to compliance with this section brought by the exclusive representative of district employees against the public school employer.

(f) The employer of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit, regardless of when that employee commences employment, so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in Chicago Teachers Union v. Hudson (1986) 89 L.Ed. 2d 232.

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.

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## CHAPTER 806

An act to amend Section 4709 of the Labor Code, relating to workers' compensation benefits.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 4709 of the Labor Code is amended to read:

4709. (a) Notwithstanding any other provisions of law, a dependent of a peace officer, as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.38, 830.39, 830.4, 830.5, or 830.6 of the Penal Code, who is killed in the performance of duty or who dies or is totally disabled as a result of an accident or an injury caused by external violence or physical force, incurred in the performance of duty, when the death, accident, or injury is compensable under this division or Division 4.5 (commencing with Section 6100) shall be entitled to a scholarship at any institution described in subdivision (*l*) of Section 69535 of the Education Code. The scholarship shall be in an amount equal to the amount provided a student who has been awarded a Cal Grant scholarship as specified in Article 3

(commencing with Section 69530) of Chapter 2 of Part 42 of the Education Code.

(b) A dependent of an officer or employee of the Department of Corrections or the Department of the Youth Authority described in Section 20017.77 of the Government Code who is killed in the performance of duty, or who dies or is totally disabled as a result of an accident or an injury incurred in the performance of duty, when the death, accident, or injury is caused by the direct action of an inmate, and is compensable under this division or Division 4.5 (commencing with Section 6100), shall also be entitled to a scholarship specified in this section.

(c) Notwithstanding any other provisions of law, a dependent of a firefighter employed by a county, city, city and county, district, or other political subdivision of the state, who is killed in the performance of duty or who dies or is totally disabled as a result of an accident or injury incurred in the performance of duty, when the death, accident, or injury is compensable under this division or Division 4.5 (commencing with Section 6100), shall also be entitled to a scholarship specified in this section.

(d) Nothing in this section shall be interpreted to allow the admittance of the dependent into a college or university unless the dependent is otherwise qualified to gain admittance to the college or university.

(e) The scholarship provided for by this section shall be paid out of funds annually appropriated in the Budget Act to the Student Aid Commission established by Article 2 (commencing with Section 69510) of Chapter 2 of Part 42 of the Education Code.

(f) The receipt of a scholarship provided for by this section shall not preclude a dependent from receiving a Cal Grant award pursuant to Article 3 (commencing with Section 69530) of Chapter 2 of Part 42 of the Education Code, any other grant, or any fee waivers that may be provided by an institution of higher education. The receipt of a Cal Grant award pursuant to Article 3 (commencing with Section 69530) of Chapter 2 of Part 42 of the Education Code, any other grant, or any fee waivers that may be provided by an institution of higher education shall not preclude a dependent from receiving a scholarship provided for by this section.

(g) The amendments made to this section during the 1995 portion of the 1995–96 Regular Session shall apply to a student receiving a scholarship on the effective date of the amendments unless that application would result in the student receiving a scholarship on less favorable terms or in a lesser amount, in which case the student shall continue to receive the scholarship on the same terms and conditions in effect prior to the effective date of the amendments.

(h) As used in this section, ''dependent'' means the children (natural or adopted) or spouse, at the time of the death or injury, of the peace officer, law enforcement officer, or firefighter.

(i) Eligibility for a scholarship under this section shall be limited to a person who demonstrates financial need as determined by the Student Aid Commission pursuant to Article 1.5 (commencing with Section 69503) of Chapter 2 of Part 42 of the Education Code. For purposes of determining financial need, the proceeds of death benefits received by the dependent, including, but not limited to, a continuation of income received from the Public Employees' Retirement System, the proceeds from the federal Public Safety Officers' Benefits Act, life insurance policies, proceeds from Sections 4702 and 4703.5, any private scholarship where receipt is predicated upon the recipient being the survivor of a deceased public safety officer, the scholarship awarded pursuant to Section 68120 of the Education Code, and any interest received from these benefits, shall not be considered.

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## CHAPTER 807

An act to amend Sections 6303 and 6304.1 of the Labor Code, relating to occupational safety and health.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 6303 of the Labor Code is amended to read:

6303. (a) ''Place of employment'' means any place, and the premises appurtenant thereto, where employment is carried on, except a place the health and safety jurisdiction over which is vested by law in, and actively exercised by, any state or federal agency other than the division.

(b) ''Employment'' includes the carrying on of any trade, enterprise, project, industry, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire, except household domestic service. ''Employment,'' for purposes of this division only, also includes volunteer firefighting when covered by Division 4 (commencing with Section 3200) pursuant to Section 3361.

SEC. 2. Section 6304.1 of the Labor Code is amended to read:

6304.1. ''Employee'' means every person who is required or directed by any employer to engage in any employment or to go to work or be at any time in any place of employment. ''Employee'' also includes volunteer firefighters covered by Division 4 (commencing with Section 3200) pursuant to Section 3361.

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.

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## CHAPTER 808

An act to amend Section 89542.5 of the Education Code, and to amend Section 3572.5 of the Government Code, relating to higher education labor relations.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 89542.5 of the Education Code is amended to read:

89542.5. (a) The Trustees of the California State University shall establish grievance and disciplinary action procedures for all academic employees, including all temporary employees who have been employed for more than one semester or quarter, whereby all of the following requirements are satisfied:

(1) Grievances and disciplinary actions shall be heard by a faculty hearing committee composed of full-time faculty members, selected by lot from a panel elected by the campus faculty, which shall make a recommendation to the president of the state university.

(2) The grievance or disciplinary hearing shall be open to the public at the option of the person aggrieved or the person charged in a disciplinary hearing.

(3) Each party to the dispute shall have the right of representation by a faculty adviser or counsel of his or her choice and to be provided access to a complete record of the hearing.

(4) If there is disagreement between the faculty hearing committee's decision and the state university president's decision, the matter shall go before an arbitrator whose decision shall be final.

(5) The costs incurred in arbitration shall be paid by the state university.

(6) If the parties cannot agree upon an arbitrator, either party may petition the Federal Mediation Service, the State Conciliation Service, or the American Arbitration Association for a list of seven qualified, disinterested persons, from which list each party shall alternate in striking three names, and the remaining person shall be designated as the arbitrator.

(7) The grievance procedure established pursuant to this section shall be exclusive with respect to any grievance that is not subject to a State Personnel Board hearing. In the case of a grievance or disciplinary action that is subject to a State Personnel Board hearing, pursuant to Sections 89535 to 89539, inclusive, and Section 89542, the procedures provided for in those sections or those provided for in this section may be utilized. The academic employee shall have the choice of which procedures shall be utilized.

(b) For purposes of this section, a ''grievance'' is an allegation by an employee that the employee was directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like. A grievance does not include matters, such as the salary structure, which require legislative action.

(c) If a memorandum of understanding is agreed to pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, and it provides for merit pay for academic employees of the university, the arbitration provisions of this section shall not apply to grievances concerning merit pay.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that, if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 2. Section 3572.5 of the Government Code is amended to read:

3572.5. (a) Except as provided in subdivision (b), in the case where the following provisions of law are in conflict with a memorandum of understanding, the memorandum of understanding shall be controlling.

(1) Part 13 (commencing with Section 22000) of, and Sections 66609, 89007, 89039, 89500, 89501, 89502, 89503, 89504, 89505,

89505.5, 89506, 89507, 89508, 89510, 89512, 89513, 89514, 89515, 89516, 89517, 89518, 89519, 89520, 89523, 89524, 89527, 89531, 89532, 89533, 89534, 89537, 89541, 89542, 89543, 89544, 89545, 89546, 89550, 89551, 89552, 89553, 89554, 89555, 89556, 89700, and 89701 of, the Education Code.

(2) Sections 825, 825.2, 825.6, 3569.5, 6700, 11020, and 11021 of, Chapter 2 (commencing with Section 18150) of Part 1 of Division 5 of Title 2 of, Sections 18200, 19841, 19848, 19850.6, and 19864 of, Article 4 (commencing with Section 19869) and Article 5 (commencing with Section 19878) of Chapter 2.5 of Part 2.6 of Division 5 of Title 2 of, and Section 22825.1 of, the Government Code.

(3) Sections 395, 395.01, 395.05, 395.1, and 395.3 of the Military and Veterans Code.

(b) (1) Notwithstanding the inclusion, in Section 89542.5 of the Education Code, except with respect to paragraph (5) of subdivision (a) of that section, of a provision providing that, if the statute is in conflict with a memorandum of understanding reached pursuant to this chapter, the memorandum of understanding shall be controlling without further legislative action, unless the memorandum of understanding requires the expenditure of funds, that section, except for paragraph (5) of subdivision (a) of that section, provides a minimum level of benefits or rights, and is superseded by a memorandum of understanding only if the relevant terms of the memorandum of understanding provide more than the minimum level of benefits or rights set forth in that section, except for paragraph (5) of subdivision (a) of that section.

(2) This subdivision only applies to a memorandum of understanding entered into on or after January 1, 2002.

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## CHAPTER 809

An act to amend Section 1808.4 of the Vehicle Code, relating to the Department of Motor Vehicles.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

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

(a) Psychiatric social workers and trial court employees are dedicated public servants. By the nature of their job, they are involved in circumstances where the potential for the violent retaliation from some high-risk clients exists. Psychiatric social workers perform their duties

in a variety of settings, including clinics, jails, juvenile halls, independent living skills training programs, shelters, and in the field in response to emergency calls.

(b) A helping professional often becomes a target for clients that may be upset and capable of violence. In the carrying out of their professional duties, psychiatric social workers and trial court employees are vulnerable to aggressive and threatening behavior. The Legislature recognizes that psychiatric social workers and trial court employees may face real, life-threatening situations in carrying out their professional duties.

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) (A) The spouse or child of any person listed in paragraphs (1) to (21), 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 for 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 (22) 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 (22) 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 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 designations 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 for 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. 4. Section 3 of this bill incorporates amendments to Section 1808.4 of the Vehicle Code proposed by both this bill and AB 1029. 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 1808.4 of the Vehicle Code, and (3) this bill is enacted after AB 1029, in which case Section 2 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 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.

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## CHAPTER 810

An act to amend Sections 508 and 511 of, and to add Section 401.1 to, the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992), relating to the San Gabriel Basin Water Quality Authority, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. (a) The Legislature finds and declares that the adoption of this act is necessary to ensure that the mission of the San Gabriel Basin Water Quality Authority to coordinate, and provide funding for, the remediation of the largest Superfund site in the country is promptly, efficiently, and thoroughly pursued.

(b) The Legislature further finds and declares that the adoption of this act is necessary to enable the San Gabriel Basin Water Quality Authority

to continue to enter into contracts with private water producers and other public agencies for the purposes of carrying out the mission of the authority described in subdivision (a).

SEC. 2. Section 401.1 is added to the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992), to read:

401.1. (a) (1) The authority may contract with any producer or a successor in interest to a producer if no producer member, or alternate appointed to the board pursuant to Section 503.1, votes on the contract.

(2) A contract described in paragraph (1) shall be approved by an affirmative vote of a majority of all of the members, other than producer members.

(b) The financial or other interest of any producer member in any contract between a producer or a successor in interest to a producer and the authority, or the fact that a producer member may have an ownership interest in, or hold the position of, a shareholder, director, officer, agent, or employee of that producer or successor in interest to that producer, does not constitute a violation of Section 1090 of the Government Code, nor shall that interest or fact render the contract void or make it voidable under Section 1092 of the Government Code if both of the following occur:

(1) The interest and the status as shareholder, possessor of other ownership interest, director, officer, agent, or employee, as applicable, is disclosed to the board of the authority and recorded in its official records.

(2) The producer member with the interest or the status described in paragraph (1) does not participate in a board vote to approve the contract.

(c) For the purposes of this section, a producer means, in addition to a producer under the judgment, any business entity that is a majority owner or corporate affiliate of a producer.

(d) The members of the board are subject to the Political Reform Act (Title 9 (commencing with Section 81000) of the Government Code).

SEC. 3. Section 508 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 508. Any vacancy in the office of a member shall be filled as follows:

(a) (1) A vacancy in the office of a member or alternate who was appointed by a water district shall be filled by the appointing water district by a resolution adopted by a majority vote of the district governing board. The person appointed to fill the vacancy shall meet the qualifications applicable to the vacant office and shall serve for the remaining term of the vacant office.

(2) If a water district member or alternate water district member ceases to be a member of the board of directors of a water district, the office on the board occupied by that member shall be deemed vacant.

(b) (1) A vacancy in the office of a member or alternate who was elected by cities shall be filled by a special election called by the authority. Only those cities which elected the member or alternate to the office in which the vacancy has occurred are eligible to vote. Nominations and balloting shall be conducted in the same manner as a regular election, except that the date of the election and time periods shall be as prescribed by the authority. The member or alternate elected to fill a vacancy shall meet the qualifications applicable to the vacant office and shall serve for the remaining term of the vacant office.

(2) If a city member or alternate city member ceases to be a city council member, the office on the board occupied by that member shall be deemed vacant.

(c) A vacancy in the office of a producer member or alternate who was appointed by the board of directors of the Water Association shall be filled pursuant to Section 503.1.

SEC. 3.5. Section 511 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) is amended to read:

Sec. 511. (a) Except as otherwise provided, all actions of the board shall be approved by an affirmative vote of a majority of all of the members.

(b) Notwithstanding subdivision (a), an affirmative vote of a majority of all of the members shall include one city member, one producer member, and one water district member to take any of the following actions:

(1) Pursue legal action pursuant to subdivision (c) of Section 407.

(2) Impose an annual pumping right assessment pursuant to Section 605 or to continue an assessment pursuant to Section 614.

(3) Make a determination pursuant to subdivision (a) or (d) of Section 707.

SEC. 4. The Legislature finds and declares that the amendments to Section 508 of the San Gabriel Basin Water Quality Authority Act (Chapter 776 of the Statutes of 1992) made by Section 3 of this act are declaratory of, and do not constitute a change in, existing law.

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 remove statutory impediments that prevent the San Gabriel Basin Water Quality Authority from contracting for and implementing the immediate cleanup of contaminated groundwater necessary to restore safe and reliable water supplies for drinking water, public health and sanitation, and fire suppression purposes for approximately one million people in the San Gabriel Valley who rely upon the groundwater for their water supply, and to clarify provisions relating to board

members and alternate members who are appointed by water districts or elected by cities, as soon as possible, it is necessary that this act take effect immediately.

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## CHAPTER 811

An act to amend Section 48007 of, and to add Section 48007.5 to, the Public Resources Code, relating to solid waste.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 48007 of the Public Resources Code, as amended by Section 6 of Chapter 600 of the Statutes of 1999, is amended to read:

48007. (a) Recycled materials and inert waste removed from the waste stream and not disposed of in a solid waste landfill shall not be included for the purpose of assessing fees imposed pursuant to Section 48000.

(b) For purposes of this section, and only for the purpose of determining whether fees shall be imposed pursuant to Section 48000, ''inert waste removed from the waste stream and not disposed of in solid waste landfills'' includes the use, disposal, or placement of solely inert waste on property where surface mining operations, as defined in Section 2735, are being conducted, or have been conducted previously, as long as the use, disposal, or placement is for purposes of reclamation, as defined in Section 2733, pursuant to either of the following:

(1) A reclamation plan approved pursuant to Section 2774.

(2) For surface mining operations conducted prior to January 1, 1976, an agreement with a city or county, or a permit issued by a city or county, that provides for a fill appropriately engineered for the planned future use of the reclaimed minesite.

(c) For purposes of this section, ''inert waste'' means rock, concrete, brick, sand, soil, and cured asphalt only. In addition, inert waste does not include any waste that meets the definition of ''designated waste'' as defined in Section 13173 of the Water Code or ''hazardous waste'' as defined by Section 40141.

(d) This section shall remain operative until the operative date of the regulations adopted by the board pursuant to Section 48007.5 and, as of the January 1 following that operative date, this section is repealed,

unless a later enacted statute deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 48007 of the Public Resources Code, as added by Section 7 of Chapter 600 of the Statutes of 1999, is amended to read:

48007. (a) Recycled materials and inert waste removed from the waste stream and not disposed of in a solid waste landfill shall not be included for the purpose of assessing fees imposed pursuant to Section 48000.

(b) This section shall become operative on the operative date of the regulations adopted by the board pursuant to Section 48007.5.

SEC. 3. Section 48007.5 is added to the Public Resources Code, to read:

48007.5. (a) On or before January 1, 2004, the board shall adopt and file with the Secretary of State, pursuant to Section 11346.2 of the Government Code, regulations that establish an appropriate level of oversight of the management of construction and demolition waste, and the management of inert waste at mine reclamation sites.

(b) For purposes of this section, ''inert waste'' has the same meaning as defined in subdivision (c) of Section 48007, as that section read on January 1, 2002.

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## CHAPTER 812

An act to amend Sections 425.10, 425.11, 489.220, 685.030, 720.160, 720.260, 877.6, 1013, 1134, 2017, 2025, 2026, 2033.5, and 2093 of the Code of Civil Procedure, to amend Section 915 of the Evidence Code, to amend Sections 68502.5, 68511.3, 71629, 72055, 77001, 77003, 77009, 77202, 77206, and 77212, and to repeal Section 68113 of, the Government Code, and to amend Section 1463.1 of the Penal Code, relating to courts.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 425.10 of the Code of Civil Procedure is amended to read:

425.10. (a) A complaint or cross-complaint shall contain both of the following:

(1) A statement of the facts constituting the cause of action, in ordinary and concise language.

(2) A demand for judgment for the relief to which the pleader claims to be entitled. If the recovery of money or damages is demanded, the amount demanded shall be stated.

(b) Notwithstanding subdivision (a), where an action is brought to recover actual or punitive damages for personal injury or wrongful death, the amount demanded shall not be stated, but the complaint shall comply with Section 422.30 and, in a limited civil case, with Section 72055 of the Government Code.

SEC. 2. Section 425.11 of the Code of Civil Procedure is amended to read:

425.11. (a) As used in this section:

(1) ''Complaint'' includes a cross-complaint.

(2) ''Plaintiff'' includes a cross-complainant.

(3) ''Defendant'' includes a cross-defendant.

(b) When a complaint is filed in an action to recover damages for personal injury or wrongful death, the defendant may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff, who shall serve a responsive statement as to the damages within 15 days. In the event that a response is not served, the defendant, on notice to the plaintiff, may petition the court in which the action is pending to order the plaintiff to serve a responsive statement.

(c) If no request is made for the statement referred to in subdivision (a), the plaintiff shall serve the statement on the defendant before a default may be taken.

(d) The statement referred to in subdivision (b) shall be served in the following manner:

(1) If a party has not appeared in the action, the statement shall be served in the same manner as a summons.

(2) If a party has appeared in the action, the statement shall be served upon the party's attorney, or upon the party if the party has appeared without an attorney, in the manner provided for service of a summons or in the manner provided by Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(e) The statement referred to in subdivision (b) may be combined with the statement described in Section 425.115.

SEC. 3. Section 489.220 of the Code of Civil Procedure is amended to read:

489.220. (a) Except as provided in subdivision (b), the amount of an undertaking filed pursuant to this article shall be ten thousand dollars ($10,000).

(b) If, upon objection to the undertaking, the court determines that the probable recovery for wrongful attachment exceeds the amount of the undertaking, it shall order the amount of the undertaking increased to the

amount it determines to be the probable recovery for wrongful attachment if it is ultimately determined that the attachment was wrongful.

SEC. 4. Section 685.030 of the Code of Civil Procedure is amended to read:

685.030. (a) If a money judgment is satisfied in full pursuant to a writ under this title, interest ceases to accrue on the judgment:

(1) If the proceeds of collection are paid in a lump sum, on the date of levy.

(2) If the money judgment is satisfied pursuant to an earnings withholding order, on the date and in the manner provided in Section 706.024 or Section 706.028.

(3) In any other case, on the date the proceeds of sale or collection are actually received by the levying officer.

(b) If a money judgment is satisfied in full other than pursuant to a writ under this title, interest ceases to accrue on the date the judgment is satisfied in full.

(c) If a money judgment is partially satisfied pursuant to a writ under this title or is otherwise partially satisfied, interest ceases to accrue as to the part satisfied on the date the part is satisfied.

(d) For the purposes of subdivisions (b) and (c), the date a money judgment is satisfied in full or in part is the earliest of the following times:

(1) The date satisfaction is actually received by the judgment creditor.

(2) The date satisfaction is tendered to the judgment creditor or deposited in court for the judgment creditor.

(3) The date of any other performance that has the effect of satisfaction.

(e) The clerk of a court may enter in the Register of Actions a writ of execution on a money judgment as returned wholly satisfied when the judgment amount, as specified on the writ, is fully collected and only an interest deficit of no more than ten dollars ($10) exists, due to automation of the continual daily interest accrual calculation.

SEC. 5. Section 720.160 of the Code of Civil Procedure is amended to read:

720.160. (a) If the creditor files with the levying officer an undertaking that satisfies the requirements of this section within the time allowed under subdivision (b) of Section 720.140:

(1) The levying officer shall execute the writ in the manner provided by law unless the third person files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims of the third person for which the creditor has given the undertaking.

(b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of ten thousand dollars ($10,000), or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the third person.

(2) Indemnify the third person against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

(3) Be conditioned on a final judgment that the third person owns or has the right of possession of the property.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed.

SEC. 6. Section 720.260 of the Code of Civil Procedure is amended to read:

720.260. (a) If the creditor within the time allowed under subdivision (b) of Section 720.240 either files with the levying officer an undertaking that satisfies the requirements of this section and a statement that satisfies the requirements of Section 720.280 or makes a deposit with the levying officer of the amount claimed under Section 720.230:

(1) The levying officer shall execute the writ in the manner provided by law unless, in a case where the creditor has filed an undertaking, the secured party or lienholder files an undertaking to release the property pursuant to Chapter 6 (commencing with Section 720.610).

(2) After sale, payment, or delivery of the property pursuant to the writ, the property is free of all claims or liens of the secured party or lienholder for which the creditor has given the undertaking or made the deposit.

(b) Subject to Sections 720.770 and 996.010, unless the creditor elects to file an undertaking in a larger amount, the amount of the undertaking filed by the creditor under this section shall be in the amount of ten thousand dollars ($10,000) or twice the amount of the execution lien as of the date of levy or other enforcement lien as of the date it was created, whichever is the lesser amount.

(c) An undertaking given by the creditor under this chapter shall:

(1) Be made in favor of the secured party or lienholder.

(2) Indemnify the secured party or lienholder against any loss, liability, damages, costs, and attorney's fees, incurred by reason of the enforcement proceedings.

(3) Be conditioned on a final judgment that the security interest or lien of the third person is entitled to priority over the creditor's lien.

(d) If the creditor is a public entity exempt from giving an undertaking, the public entity shall, in lieu of filing the undertaking, file with the levying officer a notice stating that the public entity opposes the claim of the third person. When so filed, the notice is deemed to satisfy the requirement of this section that an undertaking be filed.

SEC. 7. Section 877.6 of the Code of Civil Procedure is amended to read:

877.6. (a) (1) Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

(2) In the alternative, a settling party may give notice of settlement to all parties and to the court, together with an application for determination of good faith settlement and a proposed order. The application shall indicate the settling parties, and the basis, terms, and amount of the settlement. The notice, application, and proposed order shall be given by certified mail, return receipt requested. Proof of service shall be filed with the court. Within 25 days of the mailing of the notice, application, and proposed order, or within 20 days of personal service, a nonsettling party may file a notice of motion to contest the good faith of the settlement. If none of the nonsettling parties files a motion within 25 days of mailing of the notice, application, and proposed order, or within 20 days of personal service, the court may approve the settlement. The notice by a nonsettling party shall be given in the manner provided in subdivision (b) of Section 1005. However, this paragraph shall not apply to settlements in which a confidentiality agreement has been entered into regarding the case or the terms of the settlement.

(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing.

(c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further

claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.

(d) The party asserting the lack of good faith shall have the burden of proof on that issue.

(e) When a determination of the good faith or lack of good faith of a settlement is made, any party aggrieved by the determination may petition the proper court to review the determination by writ of mandate. The petition for writ of mandate shall be filed within 20 days after service of written notice of the determination, or within any additional time not exceeding 20 days as the trial court may allow.

(1) The court shall, within 30 days of the receipt of all materials to be filed by the parties, determine whether or not the court will hear the writ and notify the parties of its determination.

(2) If the court grants a hearing on the writ, the hearing shall be given special precedence over all other civil matters on the calendar of the court except those matters to which equal or greater precedence on the calendar is granted by law.

(3) The running of any period of time after which an action would be subject to dismissal pursuant to the applicable provisions of Chapter 1.5 (commencing with Section 583.110) of Title 8 of Part 2 shall be tolled during the period of review of a determination pursuant to this subdivision.

SEC. 8. Section 1013 of the Code of Civil Procedure is amended to read:

1013. (a) In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension

applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(b) The copy of the notice or other paper served by mail pursuant to this chapter shall bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing.

(c) In case of service by Express Mail, the notice or other paper must be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with Express Mail postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by Express Mail; otherwise at that party's place of residence. In case of service by another method of delivery providing for overnight delivery, the notice or other paper must be deposited in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service; otherwise at that party's place of residence. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document served by Express Mail or other method of delivery providing for overnight delivery shall be extended by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(d) The copy of the notice or other paper served by Express Mail or another means of delivery providing for overnight delivery pursuant to this chapter shall bear a notation of the date and place of deposit or be accompanied by an unsigned copy of the affidavit or certificate of deposit.

(e) Service by facsimile transmission shall be permitted only where the parties agree and a written confirmation of that agreement is made. The Judicial Council may adopt rules implementing the service of documents by facsimile transmission and may provide a form for the confirmation of the agreement required by this subdivision. In case of service by facsimile transmission, the notice or other paper must be transmitted to a facsimile machine maintained by the person on whom

it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause and served on the party making the service. The service is complete at the time of transmission, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended, after service by facsimile transmission, by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.

(f) The copy of the notice or other paper served by facsimile transmission pursuant to this chapter shall bear a notation of the date and place of transmission and the facsimile telephone number to which transmitted or be accompanied by an unsigned copy of the affidavit or certificate of transmission which shall contain the facsimile telephone number to which the notice or other paper was transmitted.

(g) Subdivisions (b), (d), and (f) are directory.

SEC. 9. Section 1134 of the Code of Civil Procedure is amended to read:

1134. (a) The statement required by Section 1133 shall be filed with the clerk of the court in which the judgment is to be entered, who must endorse upon it, and enter a judgment of the court for the amount confessed with the costs provided in subdivision (b).

(b) At the time of filing, the plaintiff shall pay as court costs that shall become a part of the judgment a fee of fifteen dollars ($15). No fee shall be collected from the defendant. No fee shall be paid by the clerk of the court in which a confession of judgment is filed for the law library fund nor for services of any court reporter.

(c) The statement and affidavit, with the judgment endorsed thereon, together with the certificate filed pursuant to Section 1132, becomes the judgment roll.

SEC. 9.4. Section 2017 of the Code of Civil Procedure is amended to read:

2017. (a) Unless otherwise limited by order of the court in accordance with this article, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any

discoverable matter, as well as of the existence, description, nature, custody, condition, and location of any document, tangible thing, or land or other property.

(b) A party may obtain discovery of the existence and contents of any agreement under which any insurance carrier may be liable to satisfy in whole or in part a judgment that may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. This discovery may include the identity of the carrier and the nature and limits of the coverage. A party may also obtain discovery as to whether that insurance carrier is disputing the agreement's coverage of the claim involved in the action, but not as to the nature and substance of that dispute. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial.

(c) The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a declaration stating facts showing a good faith attempt at an informal resolution of each issue presented by the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(d) In any civil action alleging conduct that constitutes sexual harassment, sexual assault, or sexual battery, any party seeking discovery concerning the plaintiff's sexual conduct with individuals other than the alleged perpetrator is required to establish specific facts showing good cause for that discovery, and that the matter sought to be discovered is relevant to the subject matter of the action and reasonably calculated to lead to the discovery of admissible evidence. This showing shall be made by noticed motion and shall not be made or considered by the court at an ex parte hearing. This motion shall be accompanied by a declaration stating facts showing a good faith attempt at an informal resolution of each issue presented by the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for discovery, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(e) (1) Pursuant to noticed motion, a court may enter orders for the use of technology in conducting discovery in cases designated as

complex pursuant to Section 19 of the Judicial Administration Standards, cases ordered to be coordinated pursuant to Chapter 3 (commencing with Section 404) of Title 4 of Part 2, or exceptional cases exempt from case disposition time goals pursuant to Article 5 (commencing with Section 68600) of Chapter 2 of Title 8 of the Government Code, or cases assigned to Plan 3 pursuant to paragraph (3) of subdivision (b) of Section 2105 of the California Rules of Court. In other cases, the parties may stipulate to the entry of orders for the use of technology in conducting discovery.

(2) An order authorizing that discovery may be made only upon the express findings of the court or stipulation of the parties that the procedures adopted in the order meet all of the following criteria:

(A) They promote cost-effective and efficient discovery or motions relating thereto.

(B) They do not impose or require undue expenditures of time or money.

(C) They do not create an undue economic burden or hardship on any person.

(D) They promote open competition among vendors and providers of services in order to facilitate the highest quality service at the lowest reasonable cost to the litigants.

(E) They do not require parties or counsel to purchase exceptional or unnecessary services, hardware, or software.

(3) Pursuant to these orders, discovery may be conducted and maintained in electronic media and by electronic communication. The court may enter orders prescribing procedures relating to the use of electronic technology in conducting discovery, including orders for the service of requests for discovery and responses, service and presentation of motions, production, storage, and access to information in electronic form, and the conduct of discovery in electronic media. The Judicial Council may promulgate rules, standards, and guidelines relating to electronic discovery and the use of such discovery data and documents in court proceedings.

(4) Nothing in this subdivision shall diminish the rights and duties of the parties regarding discovery, privileges, procedural rights, or substantive law.

(5) If a service provider is to be used and compensated by the parties, the court shall appoint the person or organization agreed upon by the parties and approve the contract agreed upon by the parties and the service provider. If the parties do not agree on the selection, each party shall submit to the court up to three nominees for appointment together with a contract acceptable to the nominee and the court shall appoint a service provider from among the nominees. The court may condition this appointment on the acceptance of modifications in the terms of the

contract. If no nominations are received from any of the parties, the court shall appoint one or more service providers. Pursuant to noticed motion at any time and upon a showing of good cause, the court may order the removal of the service provider or vacate any agreement between the parties and the service provider, or both, effective as of the date of the order. The continued service of the service provider shall be subject to review periodically, as agreed by the parties and the service provider, or annually if they do not agree. Any disputes involving the contract or the duties, rights, and obligations of the parties or service providers may be determined on noticed motion in the action.

(6) Subject to these findings and the purpose of permitting and encouraging cost-effective and efficient discovery, ''technology,'' as used in this section, includes, but is not limited to, telephone, e-mail, CD-ROM, Internet web sites, electronic documents, electronic document depositories, Internet depositions and storage, videoconferencing, and other electronic technology that may be used to improve communication and the discovery process.

(7) Nothing in this subdivision shall be construed to modify the requirement for use of a stenographic court reporter as provided in paragraph (1) of subdivision (*l*) of Section 2025. The rules, standards, and guidelines adopted pursuant to this subdivision shall be consistent with the requirement of paragraph (1) of subdivision (*l*) of Section 2025 that deposition testimony be taken stenographically unless the parties agree or the court orders otherwise.

(8) Nothing in this subdivision shall be construed to modify or affect in any way the process used for the selection of a stenographic court reporter.

SEC. 9.6. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without

notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3 and in Section 1985.6, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*) and any intention to record the testimony by stenographic method, through the instant visual display of the testimony. In the latter event, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance.

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be

used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(3) A person may take, and any person other than the deponent may attend, a deposition by telephone or other remote electronic means. The court may expressly provide that a nonparty deponent may appear at his or her deposition by telephone if it finds there is good cause and no prejudice to any party. A party deponent must appear at his or her deposition in person and be in the presence of the deposition officer. The procedures to implement this section shall be established by court order in the specific action proceeding or by the California Rules of Court.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction,

an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of, or in addition to, this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath and is subject to all of the following requirements:

(1) The officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of the parties, or of any of the parties.

(2) Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part of the action shall be offered to all parties or their attorneys attending the deposition. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. All services and products offered or provided shall be made available at the same time to all parties or their attorneys.

(3) The deposition officer or the entity providing the services of the deposition officer shall not provide to any party or any party's attorney or third party who is financing all or part of the action any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The deposition officer or entity providing the services of the deposition officer shall not collect any personal identifying information about the witness as a service or product to be provided to any party or third party who is financing all or part of the action.

(4) Upon the request of any party or any party's attorney attending a deposition, any party or any party's attorney attending the deposition shall enter in the record of the deposition all services and products made available to that party or party's attorney or third party who is financing all or part of the action by the deposition officer or by the entity providing the services of the deposition officer. A party in the action who is not represented by an attorney shall be informed by the noticing party or the party's attorney that the unrepresented party may request this statement.

(5) Any objection to the qualifications of the deposition officer shall be waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions. Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part of the action shall be offered or provided to all parties or their attorneys attending the deposition. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party

who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. All services and products offered or provided shall be made available at the same time to all parties or their attorneys. The deposition officer or the entity providing the services of the deposition officer shall not provide to any party or any other person or entity any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The deposition officer or the entity providing the services of the deposition officer shall not collect any personal identifying information about the witness as a service or product to be provided to any party or third party who is financing all or part of the action. Upon the request of any party or any party's attorney attending a deposition, any party or any party's attorney attending the deposition shall enter in the record of the deposition all services and products made available to that party or party's attorney or third party who is financing all or part of the action by the deposition officer or by the entity providing the services of the deposition officer. A party in the action who is not represented by an attorney shall be informed by the noticing party that the unrepresented party may request this statement.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition

to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is a protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to

move for an order compelling that answer or production under subdivision (o).

(n) The deposition officer shall not suspend the taking of testimony without stipulation of the party conducting the deposition and the deponent unless any party attending the deposition or the deponent demands the taking of testimony be suspended to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or

opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of, or in addition to, this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Notwithstanding paragraph (2) of subdivision (k), any other party, at that party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all

parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a reasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.

(2) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: ''Deposition of (here insert name of deponent),'' and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action.

At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2), pursuant to a court order under Section 485.230, for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one subsequent deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent

were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

(v) Violation of subdivision (k) by any person may result in a civil penalty of up to five thousand dollars ($5,000) imposed by a court of competent jurisdiction.

SEC. 9.7. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3 and in Section 1985.6, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*) and any intention to record the testimony by stenographic method, through the instant visual display of the testimony. In the latter event, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance.

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within

150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or

opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify,

as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(3) A person may take, and any person other than the deponent may attend, a deposition by telephone or other remote electronic means. The court may expressly provide that a nonparty deponent may appear at his or her deposition by telephone if it finds there is good cause and no prejudice to any party. A party deponent must appear at his or her deposition in person and be in the presence of the deposition officer. The procedures to implement this section shall be established by court order in the specific action proceeding or by the California Rules of Court.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection

any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of, or in addition to, this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath and is subject to all of the following requirements:

(1) The officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of the parties, or of any of the parties.

(2) Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part

of the action shall be offered to all parties or their attorneys attending the deposition. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. All services and products offered or provided shall be made available at the same time to all parties or their attorneys.

(3) The deposition officer or the entity providing the services of the deposition officer shall not provide to any party or any party's attorney or third party who is financing all or part of the action any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The deposition officer or entity providing the services of the deposition officer shall not collect any personal identifying information about the witness as a service or product to be provided to any party or third party who is financing all or part of the action.

(4) Upon the request of any party or any party's attorney attending a deposition, any party or any party's attorney attending the deposition shall enter in the record of the deposition all services and products made available to that party or party's attorney or third party who is financing all or part of the action by the deposition officer or by the entity providing the services of the deposition officer. A party in the action who is not represented by an attorney shall be informed by the noticing party or the party's attorney that the unrepresented party may request this statement.

(5) Any objection to the qualifications of the deposition officer shall be waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under

Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions. Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer to any party or to any party's attorney or third party who is financing all or part of the action shall be offered or provided to all parties or their attorneys attending the deposition. No service or product may be offered or provided by the deposition officer or by the entity providing the services of the deposition officer to any party or any party's attorney or third party who is financing all or part of the action unless the service or product is offered or provided to all parties or their attorneys attending the deposition. All services and products offered or provided shall be made available at the same time to all parties or their attorneys. The deposition officer or the entity providing the services of the deposition officer shall not provide to any party or any other person or entity any service or product consisting of the deposition officer's notations or comments regarding the demeanor of any witness, attorney, or party present at the deposition. The deposition officer or the entity providing the services of the deposition officer shall not collect any personal identifying information about the witness as a service or product to be provided to any party or third party who is financing all or part of the action. Upon the request of any party or any party's attorney attending a deposition, any party or any party's attorney attending the deposition shall enter in the record of the deposition all services and products made available to that party or party's attorney or third party who is financing all or part of the action by the deposition officer or by the entity providing the services of the deposition officer. A party in the action who is not

represented by an attorney shall be informed by the noticing party that the unrepresented party may request this statement.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the

envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is a protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) The deposition officer shall not suspend the taking of testimony without stipulation of the party conducting the deposition and the deponent unless any party attending the deposition or the deponent demands the taking of testimony be suspended to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one

subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of, or in addition to, this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Notwithstanding paragraph (2) of subdivision (k), any other party, at that party's expense, may obtain

a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

A deposition officer shall not be considered a party or a party to an action for the purposes of this section. Any nonstenographic technology, used during a deposition at the discretion of the deposition officer for his or her convenience in creating a deposition transcript, and all data recorded by means of this technology, shall be the exclusive property of the deposition officer and shall not be regarded as part of a deposition transcript. Any video or audio recording of a deposition made by means of nonstenographic technology at the discretion of, and for the convenience of, a deposition officer shall not be considered an audiotape or videotape required to be maintained by a deposition officer, nor shall it be considered an audiotape or videotape made by a party to the action.

If the testimony at the deposition is recorded both stenographically and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

A videotape or audiotape recording, or any other recording made using nonstenographic technology, made or used by a deposition officer at his or her own discretion to assist in the creation of a deposition transcript, may not be reproduced and may not be used for any purpose other than to facilitate the deposition officer in creating the deposition transcript. The nonstenographic recording shall be destroyed or erased upon completion of the official transcript unless otherwise required by law or court order. If a nonstenographic recording is not destroyed or erased

upon completion of the official transcript, it shall be kept as provided in Section 69955 of the Government Code.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following receipt of the written notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one

subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a reasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.

(2) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: ''Deposition of (here insert name of deponent),'' and shall promptly transmit it to the attorney for the party who noticed the

deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2), pursuant to a court order under Section 485.230, for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one subsequent deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only

part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

(v) Violation of subdivision (k) by any person may result in a civil penalty of up to five thousand dollars ($5,000) imposed by a court of competent jurisdiction.

SEC. 10. Section 2026 of the Code of Civil Procedure is amended to read:

2026. (a) Any party may obtain discovery by taking an oral deposition, as described in subdivision (a) of Section 2025, in another state of the United States, or in a territory or an insular possession subject to its jurisdiction. Except as modified in this section, the procedures for taking oral depositions in California set forth in Section 2025 apply to an oral deposition taken in another state of the United States, or in a territory or an insular possession subject to its jurisdiction.

(b) (1) If a deponent is a party to the action or an officer, director, managing agent, or employee of a party, the service of the deposition notice is effective to compel that deponent to attend and to testify, as well as to produce any document or tangible thing for inspection and copying. The deposition notice shall specify a place in the state, territory, or insular possession of the United States that is within 75 miles of the residence or a business office of a deponent.

(2) If the deponent is not a party to the action or an officer, director, managing agent, or employee of a party, a party serving a deposition notice under this section shall use any process and procedures required and available under the laws of the state, territory, or insular possession where the deposition is to be taken to compel the deponent to attend and to testify, as well as to produce any document or tangible thing for inspection, copying, and any related activity.

(c) A deposition taken under this section shall be conducted (1) under the supervision of a person who is authorized to administer oaths by the laws of the United States or those of the place where the examination is to be held, and who is not otherwise disqualified under subdivision (k) and subparagraph (B) of paragraph (2) of subdivision (*l*) of Section 2025, or (2) before a person appointed by the court. This appointment is effective to authorize that person to administer oaths and to take

testimony. On request, the clerk of the court shall issue a commission authorizing the deposition in another state or place. The commission shall request that process issue in the place where the examination is to be held, requiring attendance and enforcing the obligations of the deponents to produce documents and answer questions. The commission shall be issued by the clerk to any party in any action pending in its venue without a noticed motion or court order. The commission may contain such terms as are required by the foreign jurisdiction to initiate the process. If a court order is required by the foreign jurisdiction, an order for a commission may be obtained by ex parte application.

SEC. 11. Section 2033.5 of the Code of Civil Procedure is amended to read:

2033.5. (a) The Judicial Council shall develop and approve official form interrogatories and requests for admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact for use in any civil action in a state court based on personal injury, property damage, wrongful death, unlawful detainer, breach of contract, family law, or fraud and for any other civil actions the Judicial Council deems appropriate. Use of the approved form interrogatories and requests for admission shall be optional.

(b) In developing the form interrogatories and requests for admission required by this section, the Judicial Council shall consult with a representative advisory committee which shall include, but not be limited to, representatives of the plaintiff's bar, the defense bar, the public interest bar, court administrators, and the public. The form interrogatories and requests for admission shall be drafted in nontechnical language and shall be made available through the office of the clerk of the appropriate trial court.

(c) The Judicial Council also shall promulgate any necessary rules to govern the use of the form interrogatories and requests for admission.

(d) The Judicial Council shall develop and approve official form interrogatories for use by a victim who has not received complete payment of a restitution order made pursuant to Section 1202.4 of the Penal Code.

(e) Notwithstanding whether a victim initiates or maintains an action to satisfy the unpaid restitution order, a victim may propound the form interrogatories approved pursuant to this section once each calendar year. The defendant subject to the restitution order shall, in responding to the interrogatories propounded, provide current information regarding the nature, extent, and location of any assets, income, and liabilities in which the defendant claims a present or future interest.

(f) This section shall become operative on January 1, 2000.

SEC. 12. Section 2093 of the Code of Civil Procedure is amended to read:

2093. (a) Every court, every judge, or clerk of any court, every justice, and every notary public, and every officer or person authorized to take testimony in any action or proceeding, or to decide upon evidence, has the power to administer oaths or affirmations.

(b) (1) Every shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) of Chapter 13 of Division 3 of the Business and Professions Code has the power to administer oaths or affirmations and may perform the duties of the deposition officer pursuant to Section 2025. The certified shorthand reporter shall be entitled to receive fees for services rendered during a deposition, including fees for deposition services, as specified in subdivision (c) of Section 8211 of the Government Code.

(2) This subdivision shall also apply to depositions taken by telephone or other remote electronic means as specified in Sections 2017 and 2025.

(c) A former judge or justice of a court of record in this state who retired or resigned from office, other than a judge or justice who was retired by the Supreme Court for disability, shall have the power to administer oaths or affirmations, if the former judge or justice requests and receives a certification from the Commission on Judicial Performance that there was no formal disciplinary proceeding pending at the time of retirement or resignation. Where no formal disciplinary proceeding was pending at the time of retirement or resignation, the Commission on Judicial Performance shall issue the certification.

No law, rule, or regulation regarding the confidentiality of proceedings of the Commission on Judicial Performance shall be construed to prohibit the Commission on Judicial Performance from issuing a certificate as provided for in this section.

SEC. 13. Section 915 of the Evidence Code is amended to read:

915. (a) Subject to subdivision (b), the presiding officer may not require disclosure of information claimed to be privileged under this division or attorney work product under subdivision (c) of Section 2018 of the Code of Civil Procedure in order to rule on the claim of privilege; provided, however, that in any hearing conducted pursuant to subdivision (c) of Section 1524 of the Penal Code in which a claim of privilege is made and the court determines that there is no other feasible means to rule on the validity of the claim other than to require disclosure, the court shall proceed in accordance with subdivision (b).

(b) When a court is ruling on a claim of privilege under Article 9 (commencing with Section 1040) of Chapter 4 (official information and identity of informer) or under Section 1060 (trade secret) or under subdivision (b) of Section 2018 of the Code of Civil Procedure (attorney

work product) and is unable to do so without requiring disclosure of the information claimed to be privileged, the court may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and any other persons as the person authorized to claim the privilege is willing to have present. If the judge determines that the information is privileged, neither the judge nor any other person may ever disclose, without the consent of a person authorized to permit disclosure, what was disclosed in the course of the proceedings in chambers.

SEC. 14. Section 68113 of the Government Code is repealed.

SEC. 15. Section 68502.5 of the Government Code is amended to read:

68502.5. (a) The Judicial Council may, as part of its trial court budget process, seek input from groups and individuals as it deems appropriate including, but not limited to, advisory committees and the Administrative Director of the Courts. The trial court budget process may include, but is not limited to, the following:

(1) The receipt of budget requests from the trial courts.

(2) The review of the trial courts' budget requests and evaluate them against performance criteria established by the Judicial Council by which a court's performance, level of coordination, and efficiency can be measured.

(3) The annual adoption of the projected cost in the subsequent fiscal year of court operations as defined in Section 77003 for each trial court. This estimation shall serve as a basis for recommended court budgets, which shall be developed for comparison purposes and to delineate funding responsibilities.

(4) The annual approval of a schedule for the allocation of moneys to individual courts and an overall trial court budget for forwarding to the Governor for inclusion in the Governor's proposed State Budget. The schedule shall be based on the performance criteria established pursuant to paragraph (2), on a minimum standard established by the Judicial Council for the operation and staffing of all trial court operations, and on any other factors as determined by the Judicial Council. This minimum standard shall be modeled on court operations using all reasonable and available measures to increase court efficiency. The schedule of allocations shall assure that all trial courts receive funding for the minimum operating and staffing standards before funding operating and staffing requests above the minimum standards, and shall include incentives and rewards for any trial court's implementation of efficiencies and cost saving measures.

(5) The reallocation of funds during the course of the fiscal year to ensure equal access to the trial courts by the public, to improve trial court operations, and to meet trial court emergencies. Neither the state nor the counties shall have any obligation to replace moneys appropriated for trial courts and reallocated pursuant to this paragraph.

(6) The allocation of funds in the Trial Court Improvement Fund to ensure equal access to trial courts by the public, to improve trial court operations, and to meet trial court emergencies.

(7) Upon approval of the trial courts' budget by the Legislature, the preparation during the course of the fiscal year of allocation schedules for payments to the trial courts, consistent with Section 68085, which shall be submitted to the Controller's office by the 10th day of the month in which payments are to be made.

(8) The establishment of rules regarding a court's authority to transfer trial court funding moneys from one functional category to another in order to address needs in any functional category.

(9) At the request of the presiding judge of a trial court, an independent review of the funding level of the court to determine whether it is adequate to enable the court to discharge its statutory and constitutional responsibilities.

(10) From time to time, a review of the level of fees charged by the courts for various services and prepare recommended adjustments for forwarding to the Legislature.

(11) Provisions set forth in rules adopted pursuant to Section 77206 of the Government Code.

(b) Courts and counties shall establish procedures to allow for the sharing of information as it relates to approved budget proposals and expenditures that impact the respective court and county budgets. The procedures shall include, upon the request of a court or county, that a respective court or county shall provide the requesting court or county a copy of its approved budget and, to the extent possible, approved program expenditure component information and a description of budget changes that are anticipated to have an impact on the requesting court or county. The Judicial Council shall provide to the Legislature on December 31, 2001, and yearly thereafter, budget expenditure data at the program component level for each court.

(c) The Judicial Council shall retain the ultimate responsibility to adopt a budget and allocate funding for the trial courts and perform the other activities listed in subdivision (a) that best assure their ability to carry out their functions, promote implementation of statewide policies, and promote the immediate implementation of efficiencies and cost savings measures in court operations, in order to guarantee equal access to the courts.

SEC. 16. Section 68511.3 of the Government Code is amended to read:

68511.3. (a) The Judicial Council shall formulate and adopt uniform forms and rules of court for litigants proceeding in forma pauperis. These rules shall provide for all of the following:

(1) Standard procedures for considering and determining applications for permission to proceed in forma pauperis, including, in the event of a denial of permission, a written statement detailing the reasons for denial and an evidentiary hearing where there is a substantial evidentiary conflict.

(2) Standard procedures to toll relevant time limitations when a pleading or other paper accompanied by the application is timely lodged with the court and delay is caused due to the processing of the application to proceed in forma pauperis.

(3) Proceeding in forma pauperis at every stage of the proceedings at both the appellate and trial levels of the court system.

(4) The confidentiality of the financial information provided to the court by these litigants.

(5) That the court may authorize the clerk of the court, county financial officer, or other appropriate county officer to make reasonable efforts to verify the litigant's financial condition without compromising the confidentiality of the application.

(6) That permission to proceed in forma pauperis be granted to all of the following:

(A) Litigants who are receiving benefits pursuant to the Supplemental Security Income (SSI) and State Supplemental Payments (SSP) programs (Sections 12200 to 12205, inclusive, of the Welfare and Institutions Code), the California Work Opportunity and Responsibility to Kids Act (CalWORKs) program (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), the Food Stamp program (7 U.S.C. Sec. 2011 et seq.), or Section 17000 of the Welfare and Institutions Code.

(B) Litigants whose monthly income is 125 percent or less of the current monthly poverty line annually established by the Secretary of Health and Human Services pursuant to the Omnibus Budget Reconciliation Act of 1981, as amended.

(C) Other persons when in the court's discretion, this permission is appropriate because the litigant is unable to proceed without using money which is necessary for the use of the litigant or the litigant's family to provide for the common necessaries of life.

(b) (1) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (A) of paragraph (6) of subdivision (a) shall declare under penalty of perjury that they are receiving the benefits and may voluntarily provide the court with their date of birth

and social security number or their Medi-Cal identification number to permit the court to verify the applicant's receipt of public assistance. The court may require any applicant, except a defendant in an unlawful detainer action, who chooses not to disclose his or her social security number for verification purposes to attach to the application documentation of benefits to support the claim and all other financial information on a form promulgated by the Judicial Council for this purpose.

(2) Litigants who apply for permission to proceed in forma pauperis pursuant to subparagraph (B) or (C) of paragraph (6) of subdivision (a) shall file a financial statement under oath on a form promulgated by, and pursuant to rules adopted by, the Judicial Council.

(c) The forms and rules adopted by the Judicial Council shall provide for the disclosure of the following information about the litigant:

(1) Current street address.

(2) Occupation and employer.

(3) Monthly income and expenses.

(4) Address and value of any real property owned directly or beneficially.

(5) Personal property with a value that exceeds five hundred dollars ($500).

The information furnished by the litigant shall be used by the court in determining his or her ability to pay all or a portion of the fees and costs.

(d) At any time after the court has granted a litigant permission to proceed in forma pauperis and prior to final disposition of the case, the clerk of the court, county financial officer, or other appropriate county officer may notify the court of any changed financial circumstances which may enable the litigant to pay all or a portion of the fees and costs which had been waived. The court may authorize the clerk of the court, county financial officer, or other appropriate county officer to require the litigant to appear before and be examined by the person authorized to ascertain the validity of their indigent status. However, no litigant shall be required to appear more than once in any four-month period. A litigant proceeding in forma pauperis shall notify the court within five days of any settlement or monetary consideration received in settlement of this litigation and of any other change in financial circumstances that affects the litigant's ability to pay court fees and costs. After the litigant either (1) appears before and is examined by the person authorized to ascertain the validity of his or her indigent status or (2) notifies the court of a change in financial circumstances, the court may then order the litigant to pay to the county the sum and in any manner the court believes is compatible with the litigant's financial ability.

In any action or proceeding in which the litigant whose fees and costs have been waived would have been entitled to recover those fees and

costs from another party to the action or proceeding had they been paid, the court may assess the amount of the waived fees and costs against the other party and order the other party to pay that sum to the county or to the clerk and serving and levying officers respectively, or the court may order the amount of the waived fees and costs added to the judgment and so identified by the clerk.

Execution may be issued on any order provided for in this subdivision in the same manner as on a judgment in a civil action. When an amount equal to the sum due and payable to the clerk has been collected upon the judgment, these amounts shall be remitted to the clerk within 30 days. Thereafter, when an amount equal to the sum due to the serving and levying officers has been collected upon the judgment, these amounts shall be due and payable to those officers and shall be remitted within 30 days. If the remittance is not received by the clerk within 30 days or there is a filing of a partial satisfaction of judgment in an amount at least equal to the fees and costs payable to the clerk or a satisfaction of judgment has been filed, notwithstanding any other provision of law, the court may issue an abstract of judgment, writ of execution, or both for recovery of those sums, plus the fees for issuance and execution and an additional fee for administering this section. The county board of supervisors shall establish a fee, not to exceed actual costs of administering this subdivision and in no case exceeding twenty-five dollars ($25), which shall be added to the writ of execution.

(e) Notwithstanding subdivision (a), a person who is sentenced to imprisonment in a state prison or confined in a county jail and, during the period of imprisonment or confinement, files a civil action or notice of appeal of a civil action in forma pauperis shall be required to pay the full amount of the filing fee to the extent provided in this subdivision.

(1) In addition to the form required by this section for filing in forma pauperis, an inmate shall file a copy of a statement of account for any sums due to the inmate for the six-month period immediately preceding the filing of the civil action or notice of appeal of a civil action. This copy shall be certified by the appropriate official of the Department of Corrections or a county jail.

(2) Upon filing the civil action or notice of appeal of a civil action, the court shall assess, and when funds exist, collect, as a partial payment of any required court fees, an initial partial filing fee of 20 percent of the greater of one of the following:

(A) The average monthly deposits to the inmate's account.

(B) The average monthly balance in the inmate's account for the six-month period immediately preceding the filing of the civil action or notice of appeal.

(3) After payment of the initial partial filing fee, the inmate shall be required to make monthly payments of 20 percent of the preceding

month's income credited to the inmate's account. The Department of Corrections shall forward payments from this account to the clerk of the court each time the amount in the account exceeds ten dollars ($10) until the filing fees are paid.

(4) In no event shall the filing fee collected pursuant to this subdivision exceed the amount of fees permitted by law for the commencement of a civil action or an appeal of a civil action.

(5) In no event shall an inmate be prohibited from bringing a civil action or appeal of a civil action solely because the inmate has no assets and no means to pay the initial partial filing fee.

SEC. 17. Section 71629 of the Government Code is amended to read:

71629. Except as provided in Sections 71624, 71625, 71626, 71626.5, 71627, and 71628, and notwithstanding any other provision of law:

(a) As provided in Section 71612, the implementation of this chapter shall not be a cause for the modification of the level of trial court employment benefits. If the same trial court employment benefits are not permitted by law or the plan vendor, the trial court shall provide other trial court employment benefits at the same level subject to the provisions of subdivision (b). The level of trial court employment benefits provided to a trial court employee as of the implementation date of this chapter shall remain in effect unless modified pursuant to subdivision (b).

(b) For employees who are represented by a recognized employee organization, the level of trial court employment benefits provided to a trial court employee may not be modified until after the expiration of an existing memorandum of understanding or agreement or a period of 24 months, whichever is longer, unless the trial court and recognized employee organization mutually agree to a modification. For employees who are not represented by a recognized employee organization, the level of trial court employment benefits may be revised by the trial court.

(c) The trial court shall reimburse the county for the cost of coverage of trial court employees in trial court employment benefit plans. If the county administers trial court employment benefits to trial court employees, or if the trial court contracts with the county to administer trial court employment benefits to trial court employees, a trial court employee shall be eligible to participate in trial court employment benefits subject to trial court employment benefit regulations, policies, terms and conditions, and subject to both of the following:

(1) A trial court employee shall have the right to receive the same level of trial court employment benefits as county employees in similar classifications, as designated by the trial court subject to the obligation

to meet and confer in good faith, without the opportunity to meet and confer with the county as to those benefits.

(2) The level of trial court employment benefits accruing to a trial court employee is subject to modification by the county if the county changes the level of the same employment benefits accruing to county employees in classifications that have been designated as similar classification pursuant to paragraph (1).

(d) As of the implementation date of this chapter:

(1) If the trial court administers trial court employment benefits to trial court employees separately from the county, the trial court shall continue to administer these benefits as provided under existing personnel policies, procedures, plans, or trial court employee memoranda of understanding or agreements.

(2) If the county administers trial court employment benefits to trial court employees or if the trial court contracts with the county to administer trial court employment benefits to trial court employees, the county may continue to administer trial court employment benefits to trial court employees pursuant to subdivision (e) or the trial court may administer trial court employment benefits to trial court employees pursuant to the following transition process:

(A) While an existing memorandum of understanding or agreement remains in effect or for a transition period of 24 months, whichever is longer, the county shall administer trial court employment benefits for represented trial court employees as provided in the applicable memorandum of understanding or agreement, unless the county is notified by the trial court pursuant to subparagraph (D) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits.

(B) For a transition period of up to 24 months after the implementation date of this chapter, the county shall administer trial court employment benefits for unrepresented trial court employees, unless notified by the trial court pursuant to subparagraph (D) that the trial court no longer needs the county to administer specified benefits, or the trial court and the county mutually agree that the county will no longer administer specified benefits. During the transition period, if the county intends to change unrepresented trial court employees' trial court employment benefits, the county shall provide the trial court with at least 60 days' notice, or a mutually agreed to amount of notice, before any change in benefits is implemented so the trial court can decide whether to accept the county's change or consider alternatives and arrange to provide benefits on its own.

(C) If, during the transition period, the trial court decides to offer particular trial court employment benefits that are different from what

the county is administering, the trial court shall be responsible for administering those particular benefits.

(D) If the trial court decides that it no longer needs the county to administer specified trial court employment benefits to trial court employees, the trial court shall provide the county with at least 60 days' notice, or a mutually agreed to amount of notice.

(e) To facilitate trial court employee participation in county trial court employment benefit plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees.

(f) A county shall have authority to provide trial court employment benefits to trial court employees if those benefits are requested by the trial court and subject to county concurrence to providing those benefits. A county's agreement to provide those benefits shall not be construed to create a meet and confer obligation between the county and any recognized employee organization.

(g) Nothing in this section shall prevent the trial court from arranging for trial court employees other trial court employment benefits plans subject to the obligation to meet and confer in good faith.

SEC. 18. Section 72055 of the Government Code is amended to read:

72055. (a) The total fee for filing of the first paper in a limited civil case shall be ninety dollars ($90), except that in a case where the amount demanded, excluding attorney's fees and costs, is ten thousand dollars ($10,000) or less, the fee shall be eighty-three dollars ($83). The first page of the first paper shall state whether the amount demanded exceeds or does not exceed ten thousand dollars ($10,000).

(b) This section applies to the initial complaint, petition, or application, and any papers transmitted from another court on the transfer of a civil action or proceeding, but does not include documents filed pursuant to Section 491.150, 704.750, or 708.160 of the Code of Civil Procedure.

(c) The term ''total fee'' as used in this section and Section 72056 includes any amount allocated to the Judges' Retirement Fund pursuant to Section 72056.1, any automation fee imposed pursuant to Section 68090.7, any construction fee imposed pursuant to Section 76238, and the law library fee established pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code. The term ''total fee'' as used in this section and Section 72056 also includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code, but the Judicial Council may authorize any trial court to exclude any portion of this dispute resolution fee from the term ''total fee.''

(d) The fee shall be waived in any action for damages against a defendant, based upon the defendant's commission of a felony offense,

upon presentation to the clerk of the court of a certified copy of the abstract of judgment of conviction of the defendant of the felony giving rise to the claim for damages. If the plaintiff would have been entitled to recover those fees from the defendant had they been paid, the court may assess the amount of the waived fees against the defendant and order the defendant to pay that sum to the county.

SEC. 19. Section 77001 of the Government Code is amended to read:

77001. The Judicial Council shall adopt rules which establish a decentralized system of trial court management. These rules shall ensure:

(a) Local authority and responsibility of trial courts to manage day-to-day operations.

(b) Countywide administration of the trial courts.

(c) The authority and responsibility of trial courts to manage all of the following, consistent with statute, rules of court, and standards of judicial administration:

(1) Annual allocation of funding, including policies and procedures about moving funding between functions or line items or programs.

(2) Local personnel plans, including the promulgation of personnel policies.

(3) Processes and procedures to improve court operations and responsiveness to the public.

(4) The trial courts of each county shall establish the means of selecting presiding judges, assistant presiding judges, executive officers or court administrators, clerks of court, and jury commissioners.

(d) Trial court input into the Judicial Council budget process.

(e) Equal access to justice throughout California utilizing standard practices and procedures whenever feasible.

SEC. 20. Section 77003 of the Government Code is amended to read:

77003. (a) As used in this chapter, ''court operations'' means all of the following:

(1) Salaries, benefits, and public agency retirement contributions for superior and municipal court judges and for subordinate judicial officers. For purposes of this paragraph, ''subordinate judicial officers'' includes all commissioner or referee positions created prior to July 1, 1997, including positions created in the municipal court prior to July 1, 1997, which thereafter became positions in the superior court as a result of unification of the municipal and superior courts in a county, and including those commissioner positions created pursuant to Sections 69904, 70141, 70141.9, 70142.11, 72607, 73794, 74841.5, and 74908; and includes any staff who provide direct support to commissioners; but does not include commissioners or staff who provide direct support to

the commissioners whose positions were created after July 1, 1997, unless approved by the Judicial Council, subject to availability of funding.

(2) The salary, benefits, and public agency retirement contributions for other court staff including all municipal court staff positions specifically prescribed by statute.

(3) Those marshals and sheriffs as the court deems necessary for court operations.

(4) Court-appointed counsel in juvenile court dependency proceedings and counsel appointed by the court to represent a minor pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code.

(5) Services and supplies relating to court operations.

(6) Collective bargaining under Sections 71630 and 71639.3 with respect to court employees.

(7) Subject to paragraph (1) of subdivision (d) of Section 77212, actual indirect costs for county and city and county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to statute; courthouse construction; district attorney services; probation services; indigent criminal defense; grand jury expenses and operations; and pretrial release services.

(b) However, ''court operations'' does not include collection enhancements as defined in Rule 810 of the California Rules of Court as it read on July 1, 1996.

SEC. 20.5. Section 77003 of the Government Code is amended to read:

77003. (a) As used in this chapter, ''court operations'' means all of the following:

(1) Salaries, benefits, and public agency retirement contributions for superior and municipal court judges and for subordinate judicial officers. For purposes of this paragraph, ''subordinate judicial officers'' includes all commissioner or referee positions created prior to July 1, 1997, including positions created in the municipal court prior to July 1, 1997, which thereafter became positions in the superior court as a result of unification of the municipal and superior courts in a county, and including those commissioner positions created pursuant to Sections 69904, 70141, 70141.9, 70142.11, 72607, 73794, 74841.5, and 74908; and includes any staff who provide direct support to commissioners; but does not include commissioners or staff who provide direct support to the commissioners whose positions were created after July 1, 1997, unless approved by the Judicial Council, subject to availability of funding.

(2) The salary, benefits, and public agency retirement contributions for other court staff including all municipal court staff positions specifically prescribed by statute.

(3) Those marshals and sheriffs as the court deems necessary for court operations.

(4) Court-appointed counsel in juvenile court dependency proceedings and counsel appointed by the court to represent a minor pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code.

(5) Services and supplies relating to court operations.

(6) Collective bargaining under Sections 71630 and 71639.3 with respect to court employees.

(7) Subject to paragraph (1) of subdivision (d) of Section 77212, actual indirect costs for county and city and county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to statute; courthouse construction; district attorney services; probation services; indigent criminal defense; grand jury expenses and operations; and pretrial release services.

(8) Except as provided in subdivision (b), other matters listed as court operations in Rule 810 of the California Rules of Court as it read on July 1, 1996.

(b) However, ''court operations'' does not include collection enhancements as defined in Rule 810 of the California Rules of Court as it read on July 1, 1996.

SEC. 21. Section 77009 of the Government Code is amended to read:

77009. (a) For the purposes of funding trial court operations, each board of supervisors shall establish in the county treasury a Trial Court Operations Fund, which will operate as an agency fund. All funds appropriated in the Budget Act and allocated and reallocated to each court in the county by the Judicial Council shall be deposited into the fund. Accounts shall be established in the Trial Court Operations Fund for each trial court in the county, except that one account may be established for courts which have a unified budget. In a county where court budgets include appropriations for expenditures administered on a countywide basis, including, but not limited to, court security, centralized data-processing and planning and research services, an account for each centralized service shall be established and funded from those appropriations.

(b) The moneys of the Trial Court Operations Fund arising from deposits of funds appropriated in the Budget Act and allocated or reallocated to each court in the county by the Judicial Council shall be payable only for the purposes set forth in Sections 77003 and 77006.5,

and for services purchased by the court pursuant to subdivisions (b) and (c) of Section 77212. The presiding judge of each court in a county, or his or her designee, shall authorize and direct expenditures from the fund and the county auditor-controller shall make payments from the funds as directed. Approval of the board of supervisors is not required for expenditure from this fund.

(c) All funds received by a trial court from any source shall be deposited in the trial court operations fund, except as provided in this section. Funds that are received to fulfill the requirements of Article 4 (commencing with Section 4250) of Chapter 2 of Part 2 of Division 9 and Division 14 (commencing with Section 10000) of the Family Code shall be identified and maintained in a separate account established in the fund for this purpose. All other funds that are received for purposes other than court operations, as defined in Section 77003 and Rule 810 of the California Rules of Court, shall be identified and maintained in one or more separate accounts established in the fund pursuant to procedures adopted by the Judicial Council. This subdivision shall only apply to funds received by the courts for operating and program purposes. This subdivision shall not apply to either of the following:

(1) Funds received by the courts pursuant to Section 68084, if those funds are not for operating or program use.

(2) Payments from a party or a defendant received by a trial court or the county for any fees, fines, or forfeitures.

(d) Interest received by a county which is attributable to investment of money required by this section to be deposited in its Trial Court Operations Fund shall be deposited in the fund and shall be used for trial court operations purposes.

(e) In no event shall interest be charged to the Trial Court Operations Fund, except as provided in Section 77009.1.

(f) Reasonable administrative expenses incurred by the county associated with the operation of this fund shall be charged to each court on a pro rata basis in proportion to the total amount allocated to each court in this fund.

(g) A county, or city and county, may bill trial courts within its jurisdiction for costs for services provided by the county, or city and county, as described in Sections 77003 and 77212, including indirect costs as described in paragraph (7) of subdivision (a) of Section 77003 and Section 77212. The costs billed by the county, or the city and the county, pursuant to this subdivision shall not exceed the costs incurred by the county, or the city and the county, of providing similar services to county departments or special districts.

(h) Pursuant to Section 77206, the Controller, at the request of the Legislature, may perform financial and fiscal compliance audits of this

fund. The Judicial Council or its representatives may perform audits and reviews of this fund wherever the records may be located.

(i) The Judicial Council, in consultation with the Controller's office, shall establish procedures to implement the provisions of this section and to provide for payment of trial court operations expenses, as described in Sections 77003 and 77006.5, incurred on July 1, 1997, and thereafter.

(j) Notwithstanding any other provision of law, including, but not limited to, this section, the Judicial Council may establish trial court operations funds separate from the county treasury. The operations funds may supersede those provided for under this section and may require the courts to include any or all money under the control of the court in the funds.

SEC. 21.5. Section 77009 of the Government Code is amended to read:

77009. (a) For the purposes of funding trial court operations, each board of supervisors shall establish in the county treasury a Trial Court Operations Fund, which will operate as an agency fund. All funds appropriated in the Budget Act and allocated and reallocated to each court in the county by the Judicial Council shall be deposited into the fund. Accounts shall be established in the Trial Court Operations Fund for each trial court in the county, except that one account may be established for courts which have a unified budget. In a county where court budgets include appropriations for expenditures administered on a countywide basis, including, but not limited to, court security, centralized data processing and planning and research services, an account for each centralized service shall be established and funded from those appropriations.

(b) The moneys of the Trial Court Operations Fund arising from deposits of funds appropriated in the Budget Act and allocated or reallocated to each court in the county by the Judicial Council shall be payable only for the purposes set forth in Sections 77003 and 77006.5, and for services purchased by the court pursuant to subdivisions (b) and (c) of Section 77212. The presiding judge of each court in a county, or his or her designee, shall authorize and direct expenditures from the fund and the county auditor-controller shall make payments from the funds as directed. Approval of the board of supervisors is not required for expenditure from this fund.

(c) All funds received by a trial court from any source shall be deposited in the trial court operations fund, except as provided in this section. Funds that are received to fulfill the requirements of Article 4 (commencing with Section 4250) of Chapter 2 of Part 2 of Division 9 and Division 14 (commencing with Section 10000) of the Family Code shall be identified and maintained in a separate account established in the

fund for this purpose. All other funds that are received for purposes other than court operations, as defined in Section 77003 and Rule 810 of the California Rules of Court, shall be identified and maintained in one or more separate accounts established in the fund pursuant to procedures adopted by the Judicial Council. This subdivision shall only apply to funds received by the courts for operating and program purposes. This subdivision shall not apply to either of the following:

(1) Funds received by the courts pursuant to Section 68084, if those funds are not for operating or program use.

(2) Payments from a party or a defendant received by a trial court or the county for any fees, fines, or forfeitures.

(d) Interest received by a county that is attributable to investment of money required by this section to be deposited in its Trial Court Operations Fund shall be deposited in the fund and shall be used for trial court operations purposes.

(e) In no event shall interest be charged to the Trial Court Operations Fund, except as provided in Section 77009.1.

(f) Reasonable administrative expenses incurred by the county associated with the operation of this fund shall be charged to each court on a pro rata basis in proportion to the total amount allocated to each court in this fund.

(g) A county, or city and county, may bill trial courts within its jurisdiction for costs for services provided by the county, or city and county, as described in Sections 77003 and 77212, including indirect costs as described in paragraph (7) of subdivision (a) of Section 77003 and Section 77212. The costs billed by the county, or the city and the county, pursuant to this subdivision shall not exceed the costs incurred by the county, or the city and the county, of providing similar services to county departments or special districts.

(h) Pursuant to Section 77206, the Controller, at the request of the Legislature, may perform financial and fiscal compliance audits of this fund. The Judicial Council or its representatives may perform audits and reviews of this fund wherever the records may be located.

(i) The Judicial Council, in consultation with the Controller's office, shall establish procedures to implement this section and to provide for payment of trial court operations expenses, as described in Sections 77003 and 77006.5, incurred on July 1, 1997, and thereafter.

(j) Notwithstanding any other provision of law, including, but not limited to, this section, the Judicial Council may establish trial court operations funds separate from the county treasury. The operations funds may supersede those provided for under this section and may require the courts to include any or all money under the control of the court in the funds.

SEC. 22. Section 77202 of the Government Code is amended to read:

77202. (a) The Legislature shall make an annual appropriation to the Judicial Council for the general operations of the trial courts based on the request of the Judicial Council. The Judicial Council's trial court budget request shall meet the needs of all trial courts in a manner which promotes equal access to the courts statewide. The Judicial Council shall allocate the appropriation to the trial courts in a manner that best ensures the ability of the courts to carry out their functions, promotes implementation of statewide policies, and promotes the immediate implementation of efficiencies and cost saving measures in court operations, in order to guarantee access to justice to citizens of the state.

The Judicial Council shall ensure that its trial court budget request and the allocations made by it reward each trial court's implementation of efficiencies and cost saving measures.

These efficiencies and cost saving measures shall include, but not be limited to, the following:

(1) The sharing or merger of court support staff among trial courts across counties.

(2) The assignment of any type of case to a judge for all purposes commencing with the filing of the case and regardless of jurisdictional boundaries.

(3) The establishment of a separate calendar or division to hear a particular type of case.

(4) In rural counties, the use of all court facilities for hearings and trials of all types of cases and the acceptance of filing documents in any case.

(5) The use of alternative dispute resolution programs, such as arbitration.

(6) The development and use of automated accounting and case-processing systems.

(b) The Judicial Council shall adopt policies and procedures governing practices and procedures for budgeting in the trial courts in a manner that best ensures the ability of the courts to carry out their functions and may delegate the adoption to the Administrative Director of the Courts. The Administrative Director of the Courts shall establish budget procedures and an annual schedule of budget development and management consistent with these rules.

SEC. 23. Section 77206 of the Government Code is amended to read:

77206. (a) Notwithstanding any other provision of law, the Judicial Council may regulate the budget and fiscal management of the trial courts. The Judicial Council, in consultation with the Controller, shall maintain appropriate regulations for recordkeeping and accounting by

the courts. The Judicial Council shall seek to ensure, by these provisions, that (1) the fiscal affairs of the trial courts are managed efficiently, effectively, and responsibly, and (2) all moneys collected by the courts, including filing fees, fines, forfeitures, and penalties, and all revenues and expenditures relating to court operations are known. The Judicial Council may delegate their authority under this section, when appropriate, to the Administrative Director of the Courts.

(b) Regulations, rules, and reporting requirements adopted pursuant to this chapter shall be exempt from review and approval or other processing by the Office of Administrative Law as provided for in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(c) The Controller, at the request of the Legislature, may perform and publish financial and fiscal compliance audits of the reports of court revenues and expenditures. The Controller shall report the results of these audits to the Legislature and the Judicial Council. The Judicial Council or its representative may perform audits and reviews of all court financial records wherever they may be located.

(d) The Judicial Council shall provide for the transmission of summary information concerning court revenues and expenditures to the Controller.

(e) The Judicial Council shall adopt rules to provide for reasonable public access to budget allocation and expenditure information at the state and local level.

(f) The Judicial Council shall adopt rules ensuring that, upon written request, the trial courts provide, in a timely manner, information relating to the administration of the courts, including financial information and other information that affects the wages, hours, and working conditions of trial court employees.

SEC. 24. Section 77212 of the Government Code is amended to read:

77212. (a) The State of California, the counties of California, and the trial courts of California, recognize that a unique and interdependent relationship has evolved between the courts and the counties over a sustained period of time. While it is the intent of this act to transfer all fiscal responsibility for the support of the trial courts from the counties to the State of California, it is imperative that the activities of the state, the counties, and the trial courts be maintained in a manner that ensures that services to the people of California not be disrupted. Therefore, to this end, during the 1997–98 fiscal year, commencing on July 1, 1997, counties shall continue to provide and courts shall continue to use, county services provided to the trial courts on July 1, 1997, including, but not limited to: auditor/controller services, coordination of telephone services, data-processing and information technology services,

procurement, human resources services, affirmative action services, treasurer/tax collector services, county counsel services, facilities management, and legal representation. These services shall be provided to the court at a rate that shall not exceed the costs of providing similar services to county departments or special districts. If the cost was not included in the county base pursuant to paragraph (1) of subdivision (b) of Section 77201 or was not otherwise charged to the court prior to July 1, 1997, and were court operation costs as defined in Section 77003 in fiscal year 1994–95, the court may seek adjustment of the amount the county is required to submit to the state pursuant Section 77201.

(b) In fiscal year 1998–99 commencing on July 1, 1998, and thereafter the county may give notice to the court that the county will no longer provide a specific service except that the county shall cooperate with the court to ensure that a vital service for the court shall be available from the county or other entities that provide the service. The notice must be given at least 90 days prior to the end of the fiscal year and shall be effective only upon the first day of the succeeding fiscal year.

(c) In fiscal year 1998–99, commencing on July 1, 1998, and thereafter, the court may give notice to the county that the court will no longer use a specific county service. The notice shall be given at least 90 days prior to the end of the fiscal year and shall be effective only upon the first day of the succeeding fiscal year. However, for three years from the effective date of this section, a court shall not terminate a service that involved the acquisition of equipment, including, but not limited to, computer and data processing systems, financed by a long-term financing plan whereby the county is dependent upon the court's continued financial support for a portion of the cost of the acquisition.

(d) (1) If a trial court desires to receive or continue to receive a specific service from a county or city and county as provided in subdivision (c), and the county or city and county desires to provide or continue to provide that service as provided in subdivision (b), the presiding judge of that court and the county or city and county shall enter into a contract for that service. The contract shall identify the scope of service, method of service delivery, term of agreement, anticipated service outcomes, and the cost of the service. The court and the county or city and county shall cooperate in developing and implementing the contract.

For any contract entered into after January 1, 2002, the amount of any indirect or overhead costs shall be individually stated in any contract together with the method of calculation of the indirect or overhead costs. This amount shall not contain items that are not otherwise allowable court operations. The Judicial Council may audit the county figures to ensure compliance with this section and to determine the reasonableness of the figures.

(2) This subdivision applies to services to be provided in fiscal year 1999–2000 and thereafter.

SEC. 25. Section 1463.1 of the Penal Code is amended to read:

1463.1. Notwithstanding any other provisions of law except Section 77009 of the Government Code, any trial court may elect, with prior approval of the Administrative Director of the Courts, to deposit in a bank account pursuant to Section 53679 of the Government Code, all moneys deposited as bail with the court, or with the clerk thereof.

All moneys received and disbursed through the bank account shall be properly and uniformly accounted for under any procedures the Controller may deem necessary. The Judicial Council may regulate the bank accounts, provided that its regulations are not inconsistent with those of the Controller.

SEC. 26. Section 9.7 of this bill incorporates amendments to Section 2025 of the Code of Civil Procedure proposed by both this bill and SB 805. 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 2025 of the Code of Civil Procedure, and (3) this bill is enacted after SB 805, in which case Section 9.6 of this bill shall not become operative.

SEC. 27. Section 20.5 of this bill incorporates amendments to Section 77003 of the Government Code proposed by both this bill and AB 1700. 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 77003 of the Government Code, and (3) this bill is enacted after AB 1700, in which case Section 20 of this bill shall not become operative.

SEC. 28. Section 21.5 of this bill incorporates amendments to Section 77009 of the Government Code proposed by this bill and SB 1191. 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 77009 of the Government Code, and (3) this bill is enacted after SB 1191, in which case Section 77009 of the Government Code, as amended by SB 1191, shall remain operative only until the operative date of this bill, at which time Section 21.5 of this bill shall become operative, and Section 21 of this bill shall not become operative.

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## CHAPTER 813

An act to amend Section 12965 of the Government Code, relating to employment discrimination.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 12965 of the Government Code is amended to read:

12965. (a) In the case of failure to eliminate an unlawful practice under this part through conference, conciliation, or persuasion, or in advance thereof if circumstances warrant, the director in his or her discretion may cause to be issued in the name of the department a written accusation. The accusation shall contain the name of the person, employer, labor organization, or employment agency accused, which shall be known as the respondent, shall set forth the nature of the charges, shall be served upon the respondent together with a copy of the verified complaint, as amended, and shall require the respondent to answer the charges at a hearing.

For any complaint treated by the director as a group or class complaint for purposes of investigation, conciliation, and accusation pursuant to Section 12961, an accusation shall be issued, if at all, within two years after the filing of the complaint. For any complaint alleging a violation of Section 51.7 of the Civil Code, an accusation shall be issued, if at all, within two years after the filing of the complaint. For all other complaints, an accusation shall be issued, if at all, within one year after the filing of a complaint. If the director determines, pursuant to Section 12961, that a complaint investigated as a group or class complaint under Section 12961 is to be treated as a group or class complaint for purposes of conciliation and accusation as well, that determination shall be made and shall be communicated in writing within one year after the filing of the complaint to each person, employer, labor organization, employment agency, or public entity alleged in the complaint to have committed an unlawful practice.

(b) If an accusation is not issued within 150 days after the filing of a complaint, or if the department earlier determines that no accusation will issue, the department shall promptly notify, in writing, the person claiming to be aggrieved that the department shall issue, on his or her request, the right-to-sue notice. This notice shall indicate that the person claiming to be aggrieved may bring a civil action under this part against the person, employer, labor organization, or employment agency named in the verified complaint within one year from the date of that notice. If the person claiming to be aggrieved does not request a right-to-sue notice, the department shall issue the notice upon completion of its investigation, and not later than one year after the filing of the complaint. A city, county, or district attorney in a location having an enforcement

unit established on or before March 1, 1991, pursuant to a local ordinance enacted for the purpose of prosecuting HIV/AIDS discrimination claims, acting on behalf of any person claiming to be aggrieved due to HIV/AIDS discrimination, may also bring a civil action under this part against the person, employer, labor organization, or employment agency named in the notice. The superior and municipal courts of the State of California shall have jurisdiction of those actions, and the aggrieved person may file in any of these courts. Such an action may be brought in any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained and administered, or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant's residence or principal office. A copy of any complaint filed pursuant to this part shall be served on the principal offices of the department and of the commission. The remedy for failure to send a copy of a complaint is an order to do so. Those actions may not be filed as class actions or may not be maintained as class actions by the person or persons claiming to be aggrieved where those persons have filed a civil class action in the federal courts alleging a comparable claim of employment discrimination against the same defendant or defendants. In actions brought under this section, the court, in its discretion, may award to the prevailing party reasonable attorney's fees and costs, including expert witness fees, except where the action is filed by a public agency or a public official, acting in an official capacity.

(c) (1) If an accusation includes a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or for both, or if an accusation is amended for the purpose of adding a prayer either for damages for emotional injuries as a component of actual damages, or for administrative fines, or both, the respondent may within 30 days after service of the accusation or amended accusation, elect to transfer the proceedings to a court in lieu of a hearing pursuant to subdivision (a) by serving a written notice to that effect on the department, the commission, and the person claiming to be aggrieved. The commission shall prescribe the form and manner of giving written notice.

(2) No later than 30 days after the completion of service of the notice of election pursuant to paragraph (1), the department shall dismiss the accusation and shall, either itself or, at its election, through the Attorney General, file in the appropriate court an action in its own name on behalf of the person claiming to be aggrieved as the real party in interest. In this action, the person claiming to be aggrieved shall be the real party in

interest and shall have the right to participate as a party and be represented by his or her own counsel. Complaints filed pursuant to this section shall be filed in the appropriate superior or municipal court in any county in which unlawful practices are alleged to have been committed, in the county in which records relevant to the alleged unlawful practices are maintained and administered, or in the county in which the person claiming to be aggrieved would have worked or would have had access to public accommodation, but for the alleged unlawful practices. If the defendant is not found in any of these counties, the action may be brought within the county of the defendant's residence or principal office. Those actions shall be assigned to the court's delay reduction program, or otherwise given priority for disposition by the court in which the action is filed.

(3) A court may grant as relief in any action filed pursuant to this subdivision any relief a court is empowered to grant in a civil action brought pursuant to subdivision (b), in addition to any other relief that, in the judgment of the court, will effectuate the purpose of this part. This relief may include a requirement that the employer conduct training for all employees, supervisors, and management on the requirements of this part, the rights and remedies of those who allege a violation of this part, and the employer's internal grievance procedures.

(4) The department may amend an accusation to pray for either damages for emotional injury or for administrative fines, or both, provided that the amendment is made within 30 days of the issuance of the original accusation.

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## CHAPTER 814

An act to add Section 68130.5 to the Education Code, relating to public postsecondary education.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

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

(1) There are high school pupils who have attended elementary and secondary schools in this state for most of their lives and who are likely to remain, but are precluded from obtaining an affordable college education because they are required to pay nonresident tuition rates.

(2) These pupils have already proven their academic eligibility and merit by being accepted into our state's colleges and universities.

(3) A fair tuition policy for all high school pupils in California ensures access to our state's colleges and universities, and thereby increases the state's collective productivity and economic growth.

(4) This act, as enacted during the 2001–02 Regular Session, allows all persons, including undocumented immigrant students who meet the requirements set forth in Section 68130.5 of the Education Code, to be exempt from nonresident tuition in California's colleges and universities.

(5) This act, as enacted during the 2001–02 Regular Session, does not confer postsecondary education benefits on the basis of residence within the meaning of Section 1623 of Title 8 of the United States Code.

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

(1) A state court may award only prospective injunctive and declaratory relief to a party in any lawsuit interpreting Section 68130.5 of the Education Code, as added by this act during the 2001–02 Regular Session, or any lawsuit interpreting similar requirements adopted by the Regents of the University of California pursuant to Section 68134 of the Education Code.

(2) This act will have no impact on the ability of California's public colleges and universities to assess nonresident tuition on students who are not within the scope of this act.

SEC. 2. Section 68130.5 is added to the Education Code, to read:

68130.5. Notwithstanding any other provision of law:

(a) A student, other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code, who meets all of the following requirements shall be exempt from paying nonresident tuition at the California State University and the California Community Colleges:

(1) High school attendance in California for three or more years.

(2) Graduation from a California high school or attainment of the equivalent thereof.

(3) Registration as an entering student at, or current enrollment at, an accredited institution of higher education in California not earlier than the fall semester or quarter of the 2001–02 academic year.

(4) In the case of a person without lawful immigration status, the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.

(b) A student exempt from nonresident tuition under this section may be reported by a community college district as a full-time equivalent student for apportionment purposes.

(c) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall prescribe rules and regulations for the implementation of this section.

(d) Student information obtained in the implementation of this section is confidential.

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## CHAPTER 815

An act to amend Section 14527 of the Government Code, and to amend Section 188.8 of the Streets and Highways Code, relating to transportation.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 14527 of the Government Code is amended to read:

14527. (a) After consulting with the department, the regional transportation planning agencies and county transportation commissions shall adopt and submit to the commission and the department, not later than December 15, 2001, and December 15 of each odd-numbered year thereafter, a five-year regional transportation improvement program in conformance with Section 65082. In counties where a county transportation commission or authority has been created pursuant to Chapter 2 (commencing with Section 130050) of Division 12 of the Public Utilities Code, the commission or the authority shall adopt and submit the county transportation improvement program, in conformance with Sections 130303 and 130304 of that code, to the multicounty designated transportation planning agency. Other information, including a program for expenditure of local or federal funds, may be submitted for information purposes with the program, but only at the discretion of the transportation planning agencies or the county transportation commissions.

(b) The regional transportation improvement program shall include all projects to be funded with regional improvement funds under paragraph (2) of subdivision (a) of Section 164 of the Streets and Highways Code. The regional programs shall be limited to projects to be funded in whole or in part with regional improvement funds which shall include all projects to receive allocations by the commission during the following five fiscal years. For each project, the total expenditure for each project component and the total amount of commission allocation

and the year of allocation shall be stated. The total cost of projects to be funded with regional improvement funds shall not exceed the amount specified in the fund estimate made by the commission pursuant to Section 14525.

(c) The regional transportation planning agencies and county transportation commissions may recommend projects to improve state highways with interregional improvement funds pursuant to subdivision (b) of Section 164 of the Streets and Highways Code. The recommendations shall be separate and distinct from the regional transportation program. A project recommended for funding pursuant to this subdivision shall constitute a usable segment and shall not be a condition for inclusion of other projects in the regional transportation improvement program.

(d) Major projects shall include current costs updated as of November 1 of the year of submittal and escalated to the appropriate year, and shall be consistent with, and provide the information required in, subdivision (b) of Section 14529.

(e) The regional transportation improvement program may not change the project delivery milestone date of any project as shown in the prior adopted state transportation improvement program without the consent of the department or other agency responsible for the project's delivery.

(f) Projects may not be included in the regional transportation improvement program without a complete project study report or, for a project that is not on a state highway, a project study report equivalent or major investment study.

(g) The transportation planning agencies and county transportation commissions may request and receive an amount not to exceed 1 percent of their regional improvement fund expenditures for the purposes of project planning, programming, and monitoring. A transportation planning agency or county transportation commission not receiving federal metropolitan planning funds may request and receive an amount not to exceed 5 percent of its regional improvement fund expenditures for the purposes of project planning, programming, and monitoring.

SEC. 2. Section 188.8 of the Streets and Highways Code is amended to read:

188.8. (a) From the funds programmed pursuant to Section 188 for regional improvement projects, the commission shall approve programs and program amendments, so that funding is distributed to each county of County Group No. 1 and in each county of County Group No. 2 during the county share periods commencing July 1, 1997, and ending June 30, 2004, and each period of four years thereafter. The amount shall be computed as follows:

(1) The commission shall compute, for the county share periods all of the money to be expended for regional improvement projects in County Groups Nos. 1 and 2, respectively, as provided in Section 188.

(2) From the amount computed for County Group No. 1 in paragraph (1) for the county share periods the commission shall determine the amount of programming for each county in the group based on a formula which is based 75 percent on the population of the county to the total population of County Group No. 1 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 1.

(3) From the amount computed for County Group No. 2 in paragraph (1) for the county share periods the commission shall determine the amount of programming for each county in the group based on a formula which is based 75 percent on the population of the county to the total population of County Group No. 2 and 25 percent on state highway miles in the county to the total state highway miles in County Group No. 2.

(b) Notwithstanding subdivision (a), that portion of the county population and state highway mileage in El Dorado and Placer Counties that is included within the jurisdiction of the Tahoe Regional Planning Agency shall be counted separately toward the area under the jurisdiction of the Tahoe Regional Transportation Agency and shall not be included in El Dorado and Placer Counties. The commission shall approve programs, program amendments, and fund reservations for the area under the jurisdiction of the Tahoe Regional Transportation Agency which shall be calculated using the formula described in paragraph (2) of subdivision (a).

(c) A transportation planning agency designated pursuant to Section 29532 of the Government Code, or a county transportation commission created by Division 12 (commencing with Section 130000) of the Public Utilities Code, may adopt a resolution to pool its county share programming with any county or counties adopting similar resolutions to consolidate its county shares for two consecutive county share periods into a single share covering both periods. A multicounty transportation planning agency with a population of less than three million may also adopt a resolution to pool the share of any county or counties within its region. The resolution shall provide for pooling the county share programming in any of the pooling counties for the new single share period and shall be submitted to the commission not later than May 1 immediately preceding the commencement of the county share period.

(d) For the purposes of this section, funds programmed shall include the following costs pursuant to subdivision (b) of Section 14529 of the Government Code:

(1) The amounts programmed or budgeted for both components of project development in the original programmed year.

(2) The amount programmed for right-of-way in the year programmed in the most recent state transportation improvement program. If the final estimate is greater than 120 percent or less than 80 percent of the amount originally programmed, the amount shall be adjusted for final expenditure estimates at the time of right-of-way certification.

(3) The engineer's final estimate of project costs, including construction engineering, presented to the commission for approval pursuant to Section 14533 of the Government Code in the year programmed in the most recent state transportation improvement program. If the construction contract award amount is less than 80 percent of the engineer's final estimate, excluding construction engineering, the department shall notify the commission and the commission may adjust its project allocation accordingly.

(4) Project costs shown in the program, as amended, where project allocations have not yet been approved by the commission, escalated to the date of scheduled project delivery.

(e) Project costs shall not be changed to reflect any of the following:

(1) Differences that are within 20 percent of the amount programmed for actual project development cost.

(2) Actual right-of-way purchase costs.

(3) Construction contract award amounts, except when those amounts are less than 80 percent of the engineer's final estimate, excluding construction engineering, and the commission has adjusted the project construction allocation.

(4) Changes in construction expenditures, except for supplemental project allocations made by the commission.

(f) For the purposes of this section, the population in each county is that determined by the last preceding federal census, or a subsequent census validated by the Population Research Unit of the Department of Finance, at the beginning of each county share period.

(g) For the purposes of this section, ''state highway miles'' means the miles of state highways open to vehicular traffic at the beginning of each county share period.

(h) It is the intent of the Legislature that there is to be flexibility in programming under this section and Section 188 so that, while ensuring that each county will receive an equitable share of state transportation improvement program funding, the types of projects selected and the programs from which they are funded may vary from county to county.

(i) Commencing with the four-year period commencing on July 1, 2004, individual county share shortfalls and surpluses at the end of each four-year period, if any, shall be carried forward and credited or debited to the following four years.

(j) The commission, with the consent of the department, may consider programming projects in the state transportation improvement program in a region with a population of not more than 1,000,000 at a level higher or lower than a county share, when the regional agency either asks to reserve part or all of its share until a future programming year, to build up a larger share for a higher cost project, or asks to advance an amount of the share, in an amount not to exceed 200 percent of its current share, for a larger project, to be deducted from shares for future programming years. After consulting with the department, the commission may adjust the level of programming in the regional program in the affected region against the level of interregional programming in the improvement program to accomplish the reservation or advancement, for the current state transportation improvement program. The commission shall keep track of any resulting shortfalls or surpluses in county shares.

(k) Notwithstanding subdivision (a), in a region defined by Section 66502 of the Government Code, the transportation planning agency may adopt a resolution to pool the county share of any county or counties within the region, provided that each county shall receive no less than 85 percent and not more than 115 percent of its county share for a single county share period and 100 percent of its county share over two consecutive county share periods. The resolution shall be submitted to the commission not later than May 1, immediately preceding the commencement of the county share period.

(*l*) Federal funds used for federal demonstration projects that use federal obligational authority otherwise available for other projects shall be subtracted from the county share of the county where the project is located.

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## CHAPTER 816

An act to amend Section 6380 of, to add Part 5 (commencing with Section 6400) to Division 10 of, and to repeal Section 6380.5 of, the Family Code, and to amend Section 273.6 of the Penal Code, relating to domestic violence.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence 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 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. 1.5. 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. 2. Section 6380.5 of the Family Code is repealed.

SEC. 3. Part 5 (commencing with Section 6400) is added to Division 10 of the Family Code, to read:

## PART 5. UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT

6400. This part may be cited as the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

6401. In this part:

(1) ''Foreign protection order'' means a protection order issued by a tribunal of another state.

(2) ''Issuing state'' means the state whose tribunal issues a protection order.

(3) ''Mutual foreign protection order'' means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(4) ''Protected individual'' means an individual protected by a protection order.

(5) ''Protection order'' means an injunction or other order, issued by a tribunal under the domestic violence or family violence laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual.

(6) ''Respondent'' means the individual against whom enforcement of a protection order is sought.

(7) ''State'' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or any branch of the United States military, that has jurisdiction to issue protection orders.

(8) ''Tribunal'' means a court, agency, or other entity authorized by law to issue or modify a protection order.

6402. (a) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this state. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

(b) A tribunal of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(c) A tribunal of this state shall enforce the provisions of a valid foreign protection order which govern custody and visitation, if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(d) A tribunal of this state may not enforce a provision of a foreign protection order with respect to support under this part.

(e) A foreign protection order is valid if it meets all of the following criteria:

(1) Identifies the protected individual and the respondent.

(2) Is currently in effect.

(3) Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state.

(4) Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and had an opportunity to be heard within a reasonable time after the order was issued, consistent with the rights of the respondent to due process.

(f) A foreign protection order valid on its face is prima facie evidence of its validity.

(g) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(h) A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if both of the following are true:

(1) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state.

(2) The tribunal of the issuing state made specific findings in favor of the respondent.

6403. (a) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes, in and of itself, probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(b) If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order. Verbal notice of the terms of the order is sufficient notice for the purposes of this section.

(d) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to this part.

6404. (a) Any foreign protection order shall, upon request of the person in possession of the order, be registered with a court of this state in order to be entered in the Domestic Violence Restraining Order System established under Section 6380. The Judicial Council shall adopt rules of court to do the following:

(1) Set forth the process whereby a person in possession of a foreign protection order may voluntarily register the order with a court of this state for entry into the Domestic Violence Restraining Order System.

(2) Require the sealing of foreign protection orders and provide access only to law enforcement, the person who registered the order upon written request with proof of identification, the defense after arraignment on criminal charges involving an alleged violation of the order, or upon further order of the court.

(b) No fee may be charged for the registration of a foreign protection order. The court clerk shall provide all Judicial Council forms required by this part to a person in possession of a foreign protection order free of charge.

6405. 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 foreign protection 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. 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 that may apply, including, but not limited to, Sections 820.2 and 820.4 of the Government Code.

6406. A protected individual who pursues remedies under this part is not precluded from pursuing other legal or equitable remedies against the respondent.

6407. In applying and construing this part, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that also have adopted the act cited in Section 6400.

6408. If any provision of this part or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part which can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

6409. This part applies to protection orders issued before January 1, 2002, and to continuing actions for enforcement of foreign protection orders commenced before January 1, 2002. A request for enforcement of a foreign protection order made on or after January 1, 2002, for violations of a foreign protection order occurring before January 1, 2002, is governed by this part.

SEC. 4. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) In the event of a violation of subdivision (a) which results in physical injury, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) Any order issued pursuant to Section 6320 or 6389 of the Family Code.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the order described in subdivision (a).

(4) Any order issued by another state that is recognized under Part 5 (commencing with Section 6400) of Division 10 of the Family Code.

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or ''a credible threat'' of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to a victim, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment in the state prison. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interest of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders described in subdivisions (a), (b), (d), and (e).

(g) (1) Every person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6 or 527.8 of the Code of Civil Procedure, shall be punished under the provisions of subdivision (g) of Section 12021.

(2) Every person subject to a protective order described in paragraph (1) shall not be prosecuted under this section for owning, possessing, purchasing, or receiving a firearm to the extent that firearm is granted an exemption pursuant to subdivision (h) of Section 6389 of the Family Code.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), (c), (d), or (e), the court shall impose probation consistent with the provisions of Section 1203.097, and the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter or to a shelter for abused elder persons or dependent adults, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. 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. Where 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 may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, 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 and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 4.5. Section 1.5 of this bill incorporates amendments to Section 6380 of the Family Code proposed by both this bill and AB 160. 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 160, in which case Section 1 of this bill shall not become operative.

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 817

An act to amend Section 1363 of, and to add Section 1367.26 to, the Health and Safety Code, relating to health care service plans.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

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

(a) More than 18 million Californians are enrolled in health care service plans in California, and this number is likely to grow significantly.

(b) A substantial number of plans limit the choice of health care providers that an enrollee may select.

(c) An important part of the decisionmaking process for persons enrolling in a managed care plan is choice of primary care physicians, specialists, and other health care providers.

(d) Enrollees rely on the health care service plan to provide accurate and reliable information regarding availability of choice of primary care physicians, specialists, and other health care providers.

(e) Plans should not list health care providers in their provider directories who are not being referred patients or who are not accepting new patients at the time the directory is updated and printed without noting that fact, and health care providers should not allow themselves to be listed as taking new patients when they have closed practices.

SEC. 2. Section 1363 of the Health and Safety Code is amended to read:

1363. (a) The director shall require the use by each plan of disclosure forms or materials containing information regarding the benefits, services, and terms of the plan contract as the director may require, so as to afford the public, subscribers, and enrollees with a full and fair disclosure of the provisions of the plan in readily understood language and in a clearly organized manner. The director may require that the materials be presented in a reasonably uniform manner so as to facilitate comparisons between plan contracts of the same or other types of plans. Nothing contained in this chapter shall preclude the director from permitting the disclosure form to be included with the evidence of coverage or plan contract.

The disclosure form shall provide for at least the following information, in concise and specific terms, relative to the plan, together with additional information as may be required by the director, in connection with the plan or plan contract:

(1) The principal benefits and coverage of the plan, including coverage for acute care and subacute care.

(2) The exceptions, reductions, and limitations that apply to the plan.

(3) The full premium cost of the plan.

(4) Any copayment, coinsurance, or deductible requirements that may be incurred by the member or the member's family in obtaining coverage under the plan.

(5) The terms under which the plan may be renewed by the plan member, including any reservation by the plan of any right to change premiums.

(6) A statement that the disclosure form is a summary only, and that the plan contract itself should be consulted to determine governing contractual provisions. The first page of the disclosure form shall contain a notice that conforms with all of the following conditions:

(A) (i) States that the evidence of coverage discloses the terms and conditions of coverage.

(ii) States, with respect to individual plan contracts, small group plan contracts, and any other group plan contracts for which health care services are not negotiated, that the applicant has a right to view the evidence of coverage prior to enrollment, and, if the evidence of coverage is not combined with the disclosure form, the notice shall specify where the evidence of coverage can be obtained prior to enrollment.

(B) Includes a statement that the disclosure and the evidence of coverage should be read completely and carefully and that individuals with special health care needs should read carefully those sections that apply to them.

(C) Includes the plan's telephone number or numbers that may be used by an applicant to receive additional information about the benefits of the plan or a statement where the telephone number or numbers are located in the disclosure form.

(D) For individual contracts, and small group plan contracts as defined in Article 3.1 (commencing with Section 1357), the disclosure form shall state where the health plan benefits and coverage matrix is located.

(E) Is printed in type no smaller than that used for the remainder of the disclosure form and is displayed prominently on the page.

(7) A statement as to when benefits shall cease in the event of nonpayment of the prepaid or periodic charge and the effect of nonpayment upon an enrollee who is hospitalized or undergoing treatment for an ongoing condition.

(8) To the extent that the plan permits a free choice of provider to its subscribers and enrollees, the statement shall disclose the nature and extent of choice permitted and the financial liability that is, or may be,

incurred by the subscriber, enrollee, or a third party by reason of the exercise of that choice.

(9) A summary of the provisions required by subdivision (g) of Section 1373, if applicable.

(10) If the plan utilizes arbitration to settle disputes, a statement of that fact.

(11) A summary of, and a notice of the availability of, the process the plan uses to authorize, modify, or deny health care services under the benefits provided by the plan, pursuant to Sections 1363.5 and 1367.01.

(12) A description of any limitations on the patient's choice of primary care physician, specialty care physician, or nonphysician health care practitioner, based on service area and limitations on the patient's choice of acute care hospital care, subacute or transitional inpatient care, or skilled nursing facility.

(13) General authorization requirements for referral by a primary care physician to a specialty care physician or a nonphysician health care practitioner.

(14) Conditions and procedures for disenrollment.

(15) A description as to how an enrollee may request continuity of care as required by Section 1373.96 and request a second opinion pursuant to Section 1383.15.

(16) Information concerning the right of an enrollee to request an independent review in accordance with Article 5.55 (commencing with Section 1374.30).

(17) A notice as required by Section 1364.5.

(b) (1) As of July 1, 1999, the director shall require each plan offering a contract to an individual or small group to provide with the disclosure form for individual and small group plan contracts a uniform health plan benefits and coverage matrix containing the plan's major provisions in order to facilitate comparisons between plan contracts. The uniform matrix shall include the following category descriptions together with the corresponding copayments and limitations in the following sequence:

(A) Deductibles.

(B) Lifetime maximums.

(C) Professional services.

(D) Outpatient services.

(E) Hospitalization services.

(F) Emergency health coverage.

(G) Ambulance services.

(H) Prescription drug coverage.

(I) Durable medical equipment.

(J) Mental health services.

(K) Chemical dependency services.

(L) Home health services.

(M) Other.

(2) The following statement shall be placed at the top of the matrix in all capital letters in at least 10-point boldface type:

THIS MATRIX IS INTENDED TO BE USED TO HELP YOU COMPARE COVERAGE BENEFITS AND IS A SUMMARY ONLY. THE EVIDENCE OF COVERAGE AND PLAN CONTRACT SHOULD BE CONSULTED FOR A DETAILED DESCRIPTION OF COVERAGE BENEFITS AND LIMITATIONS.

(c) Nothing in this section shall prevent a plan from using appropriate footnotes or disclaimers to reasonably and fairly describe coverage arrangements in order to clarify any part of the matrix that may be unclear.

(d) All plans, solicitors, and representatives of a plan shall, when presenting any plan contract for examination or sale to an individual prospective plan member, provide the individual with a properly completed disclosure form, as prescribed by the director pursuant to this section for each plan so examined or sold.

(e) In the case of group contracts, the completed disclosure form and evidence of coverage shall be presented to the contractholder upon delivery of the completed health care service plan agreement.

(f) Group contractholders shall disseminate copies of the completed disclosure form to all persons eligible to be a subscriber under the group contract at the time those persons are offered the plan. If the individual group members are offered a choice of plans, separate disclosure forms shall be supplied for each plan available. Each group contractholder shall also disseminate or cause to be disseminated copies of the evidence of coverage to all applicants, upon request, prior to enrollment and to all subscribers enrolled under the group contract.

(g) In the case of conflicts between the group contract and the evidence of coverage, the provisions of the evidence of coverage shall be binding upon the plan notwithstanding any provisions in the group contract that may be less favorable to subscribers or enrollees.

(h) In addition to the other disclosures required by this section, every health care service plan and any agent or employee of the plan shall, when presenting a plan for examination or sale to any individual purchaser or the representative of a group consisting of 25 or fewer individuals, disclose in writing the ratio of premium costs to health services paid for plan contracts with individuals and with groups of the same or similar size for the plan's preceding fiscal year. A plan may report that information by geographic area, provided the plan identifies

the geographic area and reports information applicable to that geographic area.

(i) Subdivision (b) shall not apply to any coverage provided by a plan for the Medi-Cal program or the Medicare program pursuant to Title XVIII and Title XIX of the Social Security Act.

SEC. 3. Section 1367.26 is added to the Health and Safety Code, to read:

1367.26. (a) A health care service plan shall provide, upon request, a list of the following contracting providers, within the enrollee's or prospective enrollee's general geographic area:

(1) Primary care providers.

(2) Medical groups.

(3) Independent practice associations.

(4) Hospitals.

(5) All other available contracting physicians, psychologists, acupuncturists, optometrists, podiatrists, chiropractors, licensed clinical social workers, marriage and family therapists, and nurse midwives to the extent their services may be accessed and are covered through the contract with the plan.

(b) This list shall indicate which providers have notified the plan that they have closed practices or are otherwise not accepting new patients at that time.

(c) The list shall indicate that it is subject to change without notice and shall provide a telephone number that enrollees can contact to obtain information regarding a particular provider. This information shall include whether or not that provider has indicated that he or she is accepting new patients.

(d) A health care service plan shall provide this information in written form to its enrollees or prospective enrollees upon request. A plan may, with the permission of the enrollee, satisfy the requirements of this section by directing the enrollee or prospective enrollee to the plan's provider listings on its website. Plans shall ensure that the information provided is updated at least quarterly. A plan may satisfy this update requirement by providing an insert or addendum to any existing provider listing. This requirement shall not mandate a complete republishing of a plan's provider directory.

(e) Each plan shall make information available, upon request, concerning a contracting provider's professional degree, board certifications and any recognized subspeciality qualifications a specialist may have.

(f) Nothing in this section shall prohibit a plan from requiring its contracting providers, contracting provider groups, or contracting specialized health care plans to satisfy these requirements. If a plan delegates the responsibility of complying with this section to its

contracting providers, contracting provider groups, or contracting specialized health care plans, the plan shall ensure that the requirements of this section are met.

(g) Every health care service plan shall allow enrollees to request the information required by this section through their toll-free telephone number or in writing.

SEC. 4. This act shall become operative on July 1, 2002.

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.

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## CHAPTER 818

An act to add Chapter 5 (commencing with Section 8010) to Part 2 of Division 7 of the Health and Safety Code, relating to human remains.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Chapter 5 (commencing with Section 8010) is added to Part 2 of Division 7 of the Health and Safety Code, to read:

### CHAPTER 5. CALIFORNIA NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION

#### Article 1. General Provisions

8010. This chapter shall be known, and may be cited as the California Native American Graves Protection and Repatriation Act of 2001.

8011. It is the intent of the Legislature to do all of the following:

(a) Provide a seamless and consistent state policy to ensure that all California Indian human remains and cultural items be treated with dignity and respect.

(b) Apply the state's repatriation policy consistently with the provisions of the Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), which was enacted in 1990.

(c) Facilitate the implementation of the provisions of the federal Native American Graves Protection and Repatriation Act with respect to publicly funded agencies and museums in California.

(d) Encourage voluntary disclosure and return of remains and cultural items by an agency or museum.

(e) Provide a mechanism whereby lineal descendants and culturally affiliated California Indian tribes that file repatriation claims for human remains and cultural items under the Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) or under this chapter with California state agencies and museums may request assistance from the commission in ensuring that state agencies and museums are responding to those claims in a timely manner and in facilitating the resolution of disputes regarding those claims.

(f) Provide a mechanism whereby California tribes that are not federally recognized may file claims with agencies and museums for repatriation of human remains and cultural items.

Article 2. State Cultural Affiliation and Repatriation

8012. As used in this chapter, terms shall have the same meaning as in the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), as interpreted by federal regulations, except that the following terms shall have the following meaning:

(a) ''Agency'' means any division, department, bureau, commission, board, council, city, county, city and county, district, or other political subdivision of the state, but does not include any school district.

(b) ''Burial site'' means, except for cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

(c) ''Commission'' means the Repatriation Oversight Commission established pursuant to Article 3 (commencing with Section 8025).

(d) ''Cultural items'' shall have the same meaning as defined by Section 3001 of Title 25 of the United States Code, except that it shall mean only those items that originated in California.

(e) ''Control'' means having ownership of human remains and cultural items sufficient to lawfully permit a museum or agency to treat the object as part of its collection for purposes of this chapter, whether or not the human remains and cultural items are in the physical custody of the museum or agency. Items on loan to a museum or agency from

another person, museum, or agency shall be deemed to be in the control of the lender, and not the borrowing museum or agency.

(f) ''State cultural affiliation'' means that there is a relationship of shared group identity that can reasonably be traced historically or prehistorically between members of a present-day California Indian Tribe, as defined in subdivision (i), and an identifiable earlier tribe or group. Cultural affiliation is established when the preponderance of the evidence, based on geography, kinship, biology, archaeology, linguistics, folklore, oral tradition, historical evidence, or other information or expert opinion, reasonably leads to such a conclusion.

(g) ''Inventory'' means an itemized list that summarizes the collection of human remains and associated funerary objects in the possession or control of an agency or museum. This itemized list may be the inventory list required under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(h) ''Summary'' means a document that summarizes the collection of unassociated funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of an agency or museum. This document may be the summary prepared under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(i) ''Museum'' means an entity, including a higher educational institution, excluding school districts, that receives state funds.

(j) ''California Indian tribe'' means any tribe located in California to which any of the following applies:

(1) It meets the definition of Indian tribe under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(2) It is not recognized by the federal government, but is indigenous to the territory that is now known as the State of California, and both of the following apply:

(A) It is listed in the Bureau of Indian Affairs Branch of Acknowledgement and Research petitioner list pursuant to Section 82.1 of Title 25 of the Federal Code of Regulations.

(B) It is determined by the commission to be a tribe that is eligible to participate in the repatriation process set forth in this chapter. The commission shall publish a document that lists the California tribes meeting these criteria, as well as authorized representatives to act on behalf of the tribe in the consultations required under paragraph (4) of subdivision (a) of Section 8013 and in matters pertaining to repatriation under this chapter. Criteria that shall guide the commission in making the determination of eligibility shall include, but not be limited to, the following:

(i) A continuous identity as an autonomous and separate tribal government.

(ii) Holding itself out as a tribe.

(iii) The tribe as a whole has demonstrated aboriginal ties to the territory now known as the State of California and its members can demonstrate lineal descent from the identifiable earlier groups that inhabited a particular tribal territory.

(iv) Recognition by the Indian community and non-Indian entities as a tribe.

(v) Demonstrated membership criteria.

(k) ''Possession'' means having physical custody of human remains and cultural items with a sufficient legal interest to lawfully treat the human remains and cultural items as part of a collection. The term does not include human remains and cultural items on loan to an agency or museum.

(*l*) ''Preponderance of the evidence'' means that the party's evidence on a fact indicates that it is more likely than not that the fact is true.

8013. (a) Any agency or museum that has possession or control over collections of California Native American human remains and associated funerary objects shall complete an inventory of all these remains and associated funerary objects and, to the extent possible based on all information possessed by the agency or museum, do all of the following:

(1) Identify the geographical location, state cultural affiliation, and the circumstances surrounding their acquisition.

(2) List in the inventory the human remains and associated funerary objects that are clearly identifiable as to state cultural affiliation with California Indian tribes. These items shall be listed first in order to expedite the repatriation of these items.

(3) List the human remains and associated funerary objects that are not clearly identifiable by cultural affiliation but that, given the totality of circumstances surrounding their acquisition and characteristics are determined by a reasonable belief to be human remains and associated funerary objects with a state cultural affiliation with one or more California Indian tribes. Consult with California Indian tribes believed by the agency or museum to be affiliated with the items, during the compilation of the inventory as part of the determination of affiliation. If the agency or museum cannot determine which California Indian tribes are believed to be affiliated with the items, then tribes that may be affiliated with the items shall be consulted during the compilation of the inventory.

(b) Any agency or museum that has possession or control over collections of California Indian unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary

of the objects based upon available information held by the agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition, and state cultural affiliation, where readily ascertainable. The summary shall be in lieu of an object-by-object inventory. Each agency or museum, following preparation of a summary pursuant to this subdivision, shall consult with California Indian tribes and tribally authorized government officials and traditional religious leaders.

(c) Each agency or museum shall complete the inventories and summaries required by subdivisions (a) and (b) by January 1, 2003, or within one year of the date on which the commission issues the list of California Indian tribes provided for under paragraph (2) of subdivision (i) of Section 8012, whichever is later. To the extent that this section requires the inventory and summary to include items not required to be included in the inventory and summary under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), the agency or museum shall supplement its inventory and summary under this section to include those additional items.

(d) Upon request of a California Indian tribe, a museum or agency shall supply additional available documentation to supplement the information required by subdivisions (a) and (b). For purposes of this paragraph, ''documentation'' means a summary of existing museum or agency records, including inventories or catalogs, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding the acquisition and accession of California Native American human remains and cultural items subject to this section. This section shall not be construed to authorize the completion or initiation of any scientific study of human remains or cultural items.

(e) Within 90 days of completing the inventory and summary specified in subdivisions (a) and (b), the agency or museum shall provide a copy of the inventory and summary to the commission. The commission shall, in turn, publish notices of completion of summaries and inventories on its Web site for 30 days, and make the inventory and summary available to any requesting tribe or state affiliated tribe.

(f) The inventory and summary specified in subdivisions (a) and (b) shall be completed by all agencies and museums that have possession or control of Native American human remains or cultural items, regardless of whether the agency or museum is also subject to the requirements of the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.). Any inventory or summary, or any portion of an inventory or summary, that has been created to meet the requirements of the Native American Graves Protection and Repatriation Act (25

U.S.C. Sec. 3001 et seq.) may be used to meet the requirements of this chapter, if appropriate.

(g) Any agency or museum that has completed inventories and summaries on or before January 1, 2002, as required by the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) shall be deemed to be in compliance with this section provided that the agency or museum does both of the following:

(1) Provide a copy of the inventories and summaries to the commission by July 1, 2002, or within 30 days of the date on which the commission is formed, whichever is later.

(2) Prepare supplementary inventories and summaries as necessary to comply with subdivisions (a) and (b) for those portions of their collections that originate from California and that have not been determined to be culturally affiliated with federally recognized tribes which, in the case of inventories, are those portions of the collections of an agency or museum that have been identified on their inventories under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) as ''culturally unidentifiable,'' by January 1, 2003, or within one year of the date on which the commission issues the list of California Indian tribes provided for under paragraph (2) of subdivision (j) of Section 8012, whichever is later.

(h) If the agency or museum determines that it does not have in its possession or control any human remains or cultural items, the agency or museum shall, in lieu of an inventory or summary, state that finding in a letter to the commission at the commission's request.

(i) Following completion of the initial inventories and summaries specified in subdivisions (a) and (b), each agency or museum shall update its inventories and summaries whenever the agency or museum receives possession or control of human remains or cultural items that were not included in the initial inventories and summaries. Upon completion, the agency or museum shall provide a copy of its updated inventories and summaries to the commission. Nothing in this section shall be construed to mean that a museum or agency may delay repatriation of items in the initial inventory until the updating of all inventories and summaries is completed.

8014. A tribe claiming state cultural affiliation and requesting the return of human remains and cultural items listed in the inventory or summary of an agency or museum or that requests the return of human remains and cultural items that are not listed in the inventory but are believed to be in the possession or control of the agency or museum in the state shall do both of the following:

(a) File a written request for the human remains and cultural items with the commission and the agency or museum believed to have possession or control.

(b) Provide evidence that would establish that items claimed are cultural items and are culturally affiliated with the California Indian tribe making the claim. Evidence of cultural affiliation need not be provided in cases where cultural affiliation is reasonably established by the inventory or summary.

8015. (a) Upon receiving a written request for repatriation of an item on the inventory, the commission shall forward a copy of the request to the agency or museum in possession of the item, if the criteria specified in subdivision (b) of Section 8016 have been met. At this time, the commission shall also publish the request for repatriation on its Web site for 30 days. If there are no other requests for a particular item and there is not unresolved objection pursuant to subdivision (c) of Section 8016 within 90 days of the date of distribution and publication of the inventory or summary and completion of any federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) repatriation process related to the item, the agency or museum in possession of the item shall repatriate the requested item to the requesting party. This repatriation shall occur within 30 days after the last day of the 90-day period, or on a date agreed upon by all parties.

(b) Nothing in this section shall be construed to prohibit any requesting party, a tribe, an agency, or a museum from coordinating directly with each other on repatriation, or to prohibit the repatriation at any time of any undisputed items to the requesting party prior to completion of any requirements set forth in this chapter. The commission shall receive, for their records, copies of all repatriation agreements and shall have the power to enforce these agreements.

8016. (a) If there is more than one request for repatriation for the same item, or there is a dispute between the requesting party and the agency or museum, or if a dispute arises in relation to the repatriation process, the commission shall notify the affected parties of this fact and the cultural affiliation of the item in question shall be determined in accordance with this section.

(b) Any agency or museum receiving a repatriation request pursuant to subdivision (a) shall repatriate human remains and cultural items if all of the following criteria have been met:

(1) The requested human remains or cultural items meet the definitions of human remains or cultural items that are subject to inventory requirements under subdivision (a) of Section 8013.

(2) The state cultural affiliation of the human remains or cultural items is established as required under subdivision (f) of Section 8012.

(3) The agency or museum is unable to present evidence that, if standing alone before the introduction of evidence to the contrary, would support a finding that the agency or museum has a right of possession to the requested cultural items.

(4) None of the exemptions listed in Section 10.10(c) of Title 43 of the Federal Code of Regulations apply.

(5) All other applicable requirements of regulations adopted under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), contained in Part 10 of Title 43 of the Code of Federal Regulations, have been met.

(c) Within 30 days after notice has been provided by the commission, the museum or agency shall have the right to file with the commission any objection to the requested repatriation, based on its good faith belief that the requested human remains or cultural items are not culturally affiliated with the requesting California tribe or are not subject to repatriation under this chapter.

(d) The disputing parties shall submit documentation describing the nature of the dispute, in accordance with standard mediation practices and the commission's procedures, to the commission, which shall, in turn, forward the documentation to the opposing party or parties. The disputing parties shall meet within 30 days of the date of the mailing of the documentation with the goal of settling the dispute.

(e) If, after meeting pursuant to subdivision (b), the parties are unable to settle the dispute, the commission, or a certified mediator designated by the commission in accordance with subdivision (b) of Section 8026, shall mediate the dispute.

(f) Each disputing party shall submit complaints and supporting evidence to the commission or designated mediator and the other opposing parties detailing their positions on the disputed issues in accordance with standard mediation practices and the commission's mediation procedures. Each party shall have 20 days from the date the complaint and supporting evidence were mailed to respond to the complaints. All responses shall be submitted to the opposing party or parties and the commission or designated mediator.

(g) The commission or designated mediator shall review all complaints, responses, and supporting evidence submitted. Within 20 days after the date of submission of responses, the commission or designated mediator shall hold a mediation session and render a decision within seven days of the date of the mediation session.

(h) When the disposition of any items are disputed, the party in possession of the items shall retain possession until the mediation process is completed. No transfer of items shall occur until the dispute is resolved.

(i) Tribal oral histories, documentations, and testimonies shall not be afforded less evidentiary weight than other relevant categories of evidence on account of being in those categories.

(j) If the parties are unable to resolve a dispute through mediation, the dispute shall be resolved by the commission. The determination of the

commission shall be deemed to constitute a final administrative remedy. Any party to the dispute seeking a review of the determination of the commission is entitled to file an action in the superior court seeking an independent judgement on the record as to whether the commission's decision is supported by a preponderance of the evidence. The independent review shall not constitute a de novo review of a decision by the commission, but shall be limited to a review of the evidence on the record. Petitions for review shall be filed with the court not later than 30 days after the final decision of the commission.

8017. If there is a committee or group of tribes authorized by their respective tribal governments to accept repatriation of items originating from their region and culturally affiliated with those tribal governments, then the items may be repatriated to those groups.

8018. An agency or museum that repatriates human remains and cultural items in good faith pursuant to this chapter is not liable for claims by an aggrieved party or for claims of breach of a fiduciary duty or the public trust or of violation of state law that are inconsistent with this chapter. No action shall be brought on behalf of the state or any other entity or person for damages or for injunctive relief for a claim of improper disposition of human remains or cultural items if the agency or museum has complied with the provisions of this chapter.

8019. Nothing in this section shall be construed to prohibit the governing body of a California Indian tribe or group authorized by Section 8017 from expressly relinquishing control over any human remains or control or title to any cultural item.

8020. Notwithstanding any other provision of law, and upon the request of any party or an intervenor, the commission or designated mediator may close part of a mediation session to the public if the commission or designated mediator finds that information required at the mediation session may include identification of the specific location of a burial site, human remains and cultural items or that information necessary for a determination regarding repatriation may compromise or interfere with any religious practice or custom.

8021. The filing of an appeal by either party automatically stays an order of the commission or a designated mediator on repatriation of human remains and cultural items.

## Article 3. Repatriation Oversight Commission

8025. (a) There is hereby established the Repatriation Oversight Commission composed of 10 members as follows:

(1) Two voting members appointed by the Governor from nominations made by federally recognized California tribes within the

state. One member each shall represent the central and southern areas of the state.

(2) Two voting members appointed by the Speaker of the Assembly from nominations made by federally recognized California tribes within the state. One member each shall represent the northern and southern areas of the state.

(3) Two voting members appointed by the Senate Committee on Rules from nominations made by federally recognized California tribes within the state. One member each shall represent the northern and central areas of the state.

(4) One voting member appointed by the Governor from nominations submitted by state agencies or state-funded universities and colleges.

(5) One voting member appointed by the Governor from nominations submitted by the University of California.

(6) One voting member appointed by the Governor from nominations submitted by the California Association of Museums.

(7) One voting member of a nonfederally recognized tribe appointed by the Governor from nominations submitted by the Native American Heritage Commission.

(b) The executive secretary of the commission shall be appointed by the Governor and shall be an ex officio nonvoting member of the commission.

8026. The commission shall meet when necessary, and at least quarterly shall perform the duties specified in this section including, but not limited to, the following:

(a) Order the repatriation of human remains and cultural items in accordance with this chapter.

(b) Establish mediation procedures and, upon application of the parties involved, mediate disputes between California tribes and museums and agencies relating to the disposition of human remains and cultural items. The commission shall have the power of subpoena for purposes of discovery and may impose civil penalties against any agency or museum that intentionally or willfully fails to comply with the provisions of this chapter. Members of the commission shall receive training in mediation for purposes of this subdivision. The commission may delegate its responsibility to mediate disputes to a certified mediator.

(c) Administer the budget of the commission.

(d) Establish and maintain a website for communication between tribes and museums and agencies.

(e) Upon the request of California tribes or museums and agencies, analyze and make decisions regarding providing financial assistance to aid in specific repatriation activities.

(f) Accept grants or donations, real or in-kind, to carry out the purposes of this chapter.

(g) By making recommendations to the Legislature, assist California tribes in obtaining the dedication of appropriate state lands for the purposes of reinterment of human remains and cultural items.

(h) Request and utilize the advice and services of all federal, state, and local agencies as necessary in carrying out the purposes of this chapter.

(i) Prepare and submit to the Legislature an annual report detailing commission activities, disbursement of funds, and dispute resolutions relating to the repatriation activities under this chapter.

(j) Refer any known noncompliance with the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) to the United States Attorney General and the Secretary of the Interior.

(k) Impose administrative civil penalties against any agency or museum that is determined by the commission to have violated any provision of this chapter.

(*l*) Establish those rules and regulations the commission determines to be necessary for the administration of this chapter.

8027. (a) Members of the commission shall not receive a salary but shall be entitled to reimbursement for actual expenses incurred in the performance of their duties.

(b) The chairperson of the commission shall be elected by the members.

8028. (a) The term of any member of the commission shall be for three years, and each member shall serve no more than two consecutive terms. Staggered terms shall be established by the drawing of lots at the first meeting of the commission so that a simple majority of the members shall initially serve a three-year term, and the remainder initially a two-year term.

(b) If a vacancy occurs, a replacement shall be named by the same constituency as the constituency that was represented by the member whose membership is being replaced. Replacements shall serve only for the remainder of the vacant member's term.

## Article 4. Penalties and Enforcement Procedures

8029. (a) Any agency or museum that fails to comply with the requirements of this chapter may be assessed a civil penalty by the commission, not to exceed twenty thousand dollars ($20,000) for each violation, pursuant to regulations adopted by the commission. A penalty assessed under this section shall be determined on the record after the opportunity for a hearing.

(b) In assessing a penalty under this section, the commission shall consider the following factors, in addition to any other relevant factors, in determining the amount of the penalty:

(1) The archaeological, historical, or commercial value of the item involved.

(2) The cultural and spiritual significance of the item involved.

(3) The damages suffered, both economic and noneconomic, by the aggrieved party.

(4) The number of violations that have occurred.

(c) If any agency or museum fails to pay a civil penalty pursuant to a final order issued by the commission and the time for judicial review has passed or the party subject to the civil penalty has appealed the penalty or after a final judgment has been rendered on appeal of the order, the Attorney General shall act on behalf of the commission to institute a civil action in an appropriate court to collect the penalty.

(d) An agency or museum shall not be subject to civil penalties for actions taken in good faith to comply with the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

8030. The provisions of this chapter are severable. If any provision of this chapter 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.

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## CHAPTER 819

An act to add Section 27255 to the Government Code, relating to county records.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 27255 is added to the Government Code, to read:

27255. (a) The county recorder in each county shall develop and maintain, within the existing indexing system, a comprehensive index of conservation easements and Notice of Conservation Easements on land within that county. The conservation easement index developed and maintained pursuant to this subdivision shall include all conservation easements recorded on and after January 1, 2002.

(b) For the purposes of this section, ''conservation easement'' means any limitation in a recorded instrument that contains an easement,

restriction, covenant, condition, or offer to dedicate, which is or has been executed by or on behalf of the owner of the land subject to that limitation and is binding upon successive owners of the land, and the purpose of which is to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition. ''Conservation easement'' includes a conservation easement as defined in Section 815.1 of the Civil Code, an open-space easement as defined in Section 51075 of this code, and an agricultural conservation easement as defined in Section 10211 of the Public Resources Code.

(c) On and after January 1, 2002, when a county recorder records a new conservation easement affecting property within the county, he or she shall include the easement in the index developed and maintained pursuant to subdivision (a), if the document containing the easement is entitled ''Conservation Easement,'' or the following document is properly filled out by the submitter, and recorded at the same time, or at a later date:

Recording Requested by and
When Recorded Return To:

| There is no fee required for the recording of this document pursuant to Government Code Section 6103 |
|---|
| NOTICE OF CONSERVATION EASEMENT |
| The undersigned hereby gives notice that a Conservation Easement was recorded in the _____ County Recorder's Office on _____ and recorded as Document Number _____. |
| The grantors and grantees of the Conservation Easement were |
| Grantors _____ |
| _____ |
| Grantees _____ |
| _____ |
| I declare under penalty of perjury that the above statement is true and correct. |
| Signed, _____ |
| Dated, _____ |
| THIS NOTICE IS FOR INDEXING PURPOSES ONLY, AND DOES NOT, BY ITSELF, CONSTITUTE A CONSERVATION EASEMENT |

(d) In order to include conservation easements recorded prior to January 1, 2002, the comprehensive index of conservation easements and ''Notice of Conservation Easements'' developed and maintained

pursuant to subdivision (a), any parties to conservation easements, including, but not limited to, the counties, cities, recreation and park districts or agencies, state conservancies, state agencies, the California Coastal Commission, land trusts, and nonprofit organizations, may fill out and record a Notice of Conservation Easement pursuant to subdivision (c) for each previously recorded conservation easement, in the county in which the affected real property is located.

(e) Pursuant to Section 27361, the standard fee charged by the county recorder for recording the conservation easement document shall include funds to cover the costs associated with indexing the document.

(f) It is the intent of the Legislature that nothing in this section shall be construed to require a county recorder to develop and maintain an index separate from the existing indexing system, and that the conservation easement index be established by using existing resources.

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.

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## CHAPTER 820

An act to amend Section 98.6 of the Labor Code, relating to employment.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. The Legislature finds and declares that, absent the protections by the Labor Commissioner, working men and women are ill-equipped and unduly disadvantaged in any effort to assert their individual rights otherwise protected by the Labor Code. The Legislature finds it necessary and appropriate to provide employees an inexpensive administrative remedy for the pursuit of their rights under the Labor Code. The Legislature further declares that this act is necessary to further the state interest in protecting the rights of individual employees and job applicants who could not otherwise afford to protect themselves.

SEC. 2. Section 98.6 of the Labor Code is amended to read:

98.6. (a) No person shall discharge an employee or in any manner discriminate against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights, which are under the jurisdiction of the Labor Commissioner, or has testified or is about to testify in any such proceeding or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 of Part 3 of Division 2, or because the employee has made a bona fide complaint or claim to the division pursuant to this part shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer. Any employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for such rehiring or promotion by a grievance procedure, arbitration or hearing authorized by law, is guilty of a misdemeanor.

(c) (1) Any applicant for employment who is refused employment, who is not selected for a training program leading to employment, or who in any other manner is discriminated against in the terms and conditions of any offer of employment because the applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 of Part 3 of Division 2, or because the applicant has made a bona fide complaint or claim to the division pursuant to this part shall be entitled to employment and reimbursement for lost wages and work benefits caused by the acts of the prospective employer.

(2) This subdivision shall not be construed to invalidate any collective bargaining agreement that requires an applicant for a position that is subject to the collective bargaining agreement to sign a contract that protects either or both of the following as specified in paragraphs (A) and (B), nor shall this subdivision be construed to invalidate any employer requirement of an applicant for a position that is not subject to a collective bargaining agreement to sign an employment contract that protects either or both of the following as specified in paragraphs (A) and (B):

(A) An employer against any conduct that is actually in direct conflict with the essential enterprise-related interests of the employer and where breach of that contract would actually constitute a material and substantial disruption of the employer's operation.

(B) A firefighter against any disease that is presumed to arise in the course and scope of employment, by limiting his or her consumption of tobacco products on and off the job.

(d) The provisions of this section creating new actions or remedies that are effective on January 1, 2002, to employees or applicants for employment do not apply to any state or local law enforcement agency, any religious association or corporation specified in subdivision (d) of Section 12926 of the Government Code, except as provided in Section 12926.2 of the Government Code, or any person described in Section 1070 of the Evidence Code.

(e) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(f) This section does not affect in any way existing law regarding employment discrimination related to the consumption of tobacco products.

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## CHAPTER 821

An act to add Chapter 3.8 (commencing with Section 1030) to Part 3 of Division 2 of the Labor Code, relating to employment.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Chapter 3.8 (commencing with Section 1030) is added to Part 3 of Division 2 of the Labor Code, to read:

### CHAPTER 3.8. LACTATION ACCOMMODATION

1030. Every employer, including the state and any political subdivision, shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. The break time shall, if possible, run concurrently with any break time already provided to the employee. Break time for an employee that does not run concurrently with the rest

time authorized for the employee by the applicable wage order of the Industrial Welfare Commission shall be unpaid.

1031. The employer shall make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. The room or location may include the place where the employee normally works if it otherwise meets the requirements of this section.

1032. An employer is not required to provide break time under this chapter if to do so would seriously disrupt the operations of the employer.

1033. (a) An employer who violates any provision of this chapter shall be subject to a civil penalty in the amount of one hundred dollars ($100) for each violation.

(b) If, upon inspection or investigation, the Labor Commissioner determines that a violation of this chapter has occurred, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for violations of this chapter shall be the same as those set forth in Section 1197.1.

(c) Notwithstanding any other provision of this code, violations of this chapter shall not be misdemeanors under this code.

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

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## CHAPTER 822

An act to amend Sections 8680.9, 8685, 8685.2, 8685.4, 8686.4, 8686.8, 8687, 8687.6, and 8690.6 of, and to repeal Section 8686.1 of, the Government Code, and to amend Section 2774.5 of the Public Utilities Code, relating to emergency services, and making an appropriation therefor.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 8680.9 of the Government Code is amended to read:

8680.9. ''Local emergency'' means a condition of extreme peril to persons or property proclaimed as such by the governing body of the local agency affected, in accordance with Section 8630.

SEC. 2. Section 8685 of the Government Code is amended to read:

8685. From any moneys appropriated for that purpose, and subject to the conditions specified in this article, the Director of Emergency Services shall allocate funds to meet the cost of any one or more projects as defined in Section 8680.4. Applications by school districts shall be submitted to the Superintendent of Public Instruction for review and approval, in accordance with instructions or regulations developed by the Office of Emergency Services, prior to the allocation of funds by the Director of Emergency Services.

Moneys appropriated for the purposes of this chapter may be used to provide financial assistance for the following local agency and state costs:

(a) Local agency personnel costs, equipment costs, and the cost of supplies and materials used during disaster response activities, incurred as a result of a state of emergency proclaimed by the Governor, excluding the normal hourly wage costs of employees engaged in emergency work activities.

(b) To repair, restore, reconstruct, or replace facilities belonging to local agencies damaged as a result of natural disasters as defined in Section 8680.3. Mitigation measures performed pursuant to subdivision (b) of Section 8686.4 shall qualify for funding pursuant to this chapter.

(c) Matching fund assistance for cost sharing required under federal public assistance programs.

(d) Indirect administrative costs and any other assistance deemed necessary by the Director of Emergency Services.

(e) Necessary and required site preparation costs for mobilehomes, travel trailers, and other manufactured housing units provided by the federal temporary housing assistance program operated by the Federal Emergency Management Agency.

SEC. 3. Section 8685.2 of the Government Code is amended to read:

8685.2. An allocation may be made to a local agency for a project when, within 10 days after the actual occurrence of a natural disaster, the local agency has proclaimed a local emergency and that proclamation is acceptable to the director or upon the order of the Governor when a state of emergency proclamation has been issued, and if the Legislature has appropriated money for allocation for purposes of this chapter.

SEC. 4. Section 8685.4 of the Government Code is amended to read:

8685.4. A local agency shall make application to the director for state financial assistance within 60 days after the date of the proclamation of a local emergency. The director may extend the time for this filing only under unusual circumstances. No financial aid shall be provided until a state agency, upon the request of the director, has first investigated and reported upon the proposed work, has estimated the cost of the work, and has filed its report with the director within 60 days from the date the local agency made application, unless the director extends the time because of unusual circumstances. The estimate of cost of the work may include expenditures made by the local agency for the work prior to the making of the estimate. If the reporting state agency fails to report its findings within the 60-day period, and time is not extended by the director, the director may complete the investigation and recover a proportionate amount allocated to the state agency for the balance of the investigation. ''Unusual circumstances,'' as used above, are unavoidable delays that result from recurrence of a disaster, prolonged severe weather within a one-year period, or other conditions beyond the control of the applicant. Delays resulting from administrative procedures are not unusual circumstances which warrant extensions of time.

SEC. 5. Section 8686.1 of the Government Code is repealed.

SEC. 6. Section 8686.4 of the Government Code is amended to read:

8686.4. (a) Whenever the local agency and the director determine for public facility projects that the general public and state interest will be better served by replacing a damaged or destroyed facility with a facility that will more adequately serve the present and future public needs than would be accomplished merely by repairing or restoring the damaged or destroyed facility, the director shall authorize the replacement, including, in the case of a public building, an increase in the square footage of the building replaced, but the cost of the betterment of the facility, to the extent that it exceeds the cost of repairing or restoring the damaged or destroyed facility, shall be borne and contributed by the local agency, and the excess cost shall be excluded in determining the amount to be allocated by the state. The state contribution shall not exceed the net cost of restoring each facility on the basis of the design of the facility as it existed immediately prior to the disaster in conformity with current codes, specifications, and standards.

(b) Notwithstanding subdivision (a), when the director determines there are mitigation measures that are cost- effective and that substantially reduce the risk of future damage, hardship, loss, or suffering in any area where a state of emergency has been proclaimed by the Governor, the director may authorize the implementation of those measures.

SEC. 7. Section 8686.8 of the Government Code is amended to read:

8686.8. If the director determines that a local agency is financially unable to meet the matching requirements set forth in Section 8686, or unable to provide funds for replacement of a facility pursuant to Section 8686.4, the director may, if that loan would not result in a violation of Section 18 of Article XVI of the California Constitution and out of any state money made available for purposes of this chapter, lend funds, for the completion of a project or projects. The local agency shall be required by the director to make its contribution by means of deferred payments. The deferred payments shall be made in the amounts and at the times provided by the agreement executed in connection with the application, but in any event providing full repayment within 10 years, and shall include a charge to be fixed by the director in an amount estimated by him or her to equal the revenue that the state would have derived by investing the total amounts loaned at the interest rate prevailing for legal state investments as of the date of the loan.

SEC. 8. Section 8687 of the Government Code is amended to read:

8687. Deferred payments made by a local agency pursuant to Section 8686.8 shall be made by the agency:

(a) Out of the current revenues of the local agency.

(b) If the current revenues of a city, county, or city and county, prove insufficient to enable the agency to meet the payments, the director may order the State Controller to withhold from the local agency funds that the local agency would be entitled from the state, including, as to street and highway projects, from the Motor Vehicle License Fee Fund to the extent necessary to meet the deficiency.

Those sums shall be credited to the funds in the State Treasury from which the loans were made.

SEC. 9. Section 8687.6 of the Government Code is amended to read:

8687.6. If the local agency, under Section 8687.4, is a county, the amount contributed by the county shall not be reduced to less than an amount of money equal to the amount allocated to the county for the fiscal year prior to the disaster proclamation pursuant to Section 2110.5 of the Streets and Highways Code.

SEC. 10. Section 8690.6 of the Government Code is amended to read:

8690.6. (a) There is hereby established in the Special Fund for Economic Uncertainties a Disaster Response-Emergency Operations Account. Notwithstanding Section 13340, moneys in the account are continuously appropriated, subject to the limitations specified in subdivisions (c) and (d), without regard to fiscal years, for allocation by the Director of Finance to state agencies for disaster response operation costs incurred by state agencies as a result of a state of emergency proclamation by the Governor. These allocations may be for activities that occur within 365 days after a proclamation of emergency by the

Governor, as authorized pursuant to subdivision (c), or for activities that occur after the 365th day after a proclamation of emergency by the Governor, as authorized pursuant to subdivision (d).

(b) It is the intent of the Legislature that the Disaster Response-Emergency Operations Account have an unencumbered balance of one million dollars ($1,000,000) at the beginning of each fiscal year. In the event that this account requires additional moneys to meet claims against the account, the Director of Finance may transfer moneys from the Special Fund for Economic Uncertainties to the account in that amount sufficient to pay the amount of the claims that exceed the unencumbered balance in the account.

(c) For activities that occur within 365 days after a proclamation of emergency by the Governor, the funds shall be allocated subject to the conditions of this section and in accordance with Section 27.00 of the annual Budget Act, except that the allocations may be made 30 days or less after notification of the Legislature pursuant to subdivision (b) of that section.

(d) For activities that occur after the 365th day after a proclamation of emergency by the Governor, the funds shall be allocated subject to the conditions of this section and in accordance with Section 27.00 of the annual Budget Act.

(e) Notwithstanding subdivision (a) of Section 27.00 of the annual Budget Act, authorizations for acquisitions, relocations, and environmental mitigations related to activities, as described in subdivision (c) or (d), shall be authorized pursuant to this section. However, these funds may only be authorized for needs that are a direct consequence of the proclaimed emergency where failure to undertake the project may interrupt essential state services or jeopardize public health or safety. In addition, any acquisition accomplished under this subdivision shall comply with any otherwise applicable law, except as provided in the first sentence of this subdivision.

(f) No funds allocated under this section shall be used to supplant federal funds otherwise available in the absence of state financial relief.

(g) The amount of financial assistance provided to an individual, business, or governmental entity under this section, or pursuant to any other program of state-funded disaster assistance, shall be deducted from sums received in payment of damage claims asserted against the state, its agents, or employees, for causing or contributing to the effects of the proclaimed disaster.

(h) No public entity administering disaster assistance to individuals shall receive funds under this section unless it administers that assistance pursuant to the following criteria:

(1) All applications, forms, and other written materials presented to persons seeking assistance shall be available in English and in the same

language as that used by the major non-English-speaking group within the disaster area.

(2) Bilingual staff who reflect the demographics of the disaster area shall be available to applicants.

(i) 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. 11. Section 2774.5 of the Public Utilities Code is amended to read:

2774.5. An electrical corporation or local publicly owned electric utility, as defined in subdivision (d) of Section 9604, shall immediately notify the Commissioner of the California Highway Patrol, the Office of Emergency Services, and the sheriff and any affected chief of police of the specific area within their respective law enforcement jurisdictions that will sustain a planned loss of power as soon as the planned loss becomes known as to when and where that power loss will occur. The notification shall include common geographical boundaries, grid or block numbers of the effected area, and the next anticipated power loss area designated by the electrical corporation or public entity during rotating blackouts.

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## CHAPTER 823

An act to add Section 3110.5 to the Civil Code, relating to works of improvement.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 3110.5 is added to the Civil Code, to read:

3110.5. (a) (1) This section shall apply only to an owner who contracts for a work of improvement for construction, alteration, addition to, or repair upon, property, whether the contracting owner is the owner of a fee simple absolute interest in the property or the owner of any lesser interest in the property. For purposes of this section, a lessee of real property shall be considered to be the owner of a fee simple absolute interest in that real property if and only if: (A) the initial term of the lease is at least 35 years and (B) the lease covers one or more lawful parcels under the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) and any applicable

local ordinances adopted pursuant thereto, in their entirety, including, but not limited to, parcels approved pursuant to certificate of compliance proceedings. For purposes of this section, the owner of a fee simple absolute interest shall not be deemed to be the owner of less than a fee simple absolute interest by reason of any mortgages, deeds of trust, ground leases, or other liens or encumbrances or rights to occupancy that may encumber the fee simple absolute interest. When the owner contracting for the work of improvement is an owner of an interest in the property which is less than a fee simple absolute interest, nothing in this section shall require the owner of the fee simple absolute interest who does not contract for the work of improvement to provide any security pursuant to this section or to comply with any of the other obligations of an owner under this section. When the owner contracting for the work of improvement is an owner of the fee simple absolute interest in the property, nothing in this section shall require the owner of an interest in the property which is less than a fee simple absolute interest who does not contract for the work of improvement to provide any security pursuant to this section or to comply with any of the other obligations of an owner under this section.

(2) An owner contracting for a work of improvement is subject to this section only if one of the following conditions is satisfied:

(A) The owner contracting for the work of improvement is the owner of a fee simple absolute interest in the property upon which the work of improvement is to be made, and the value of the contract for the work of improvement is more than five million dollars ($5,000,000).

(B) The owner contracting for the work of improvement is the owner of an interest which is less than a fee simple absolute interest, including a leasehold interest, in the property upon which the work of improvement is to be made, and the value of the contract for the work of improvement is more than one million dollars ($1,000,000).

(b) When an owner of property, whether an owner of a fee simple absolute interest or any lesser interest therein, contracts for any work of improvement for construction, alteration, addition to, or repair upon, the property, and the contracting owner is subject to the requirements of this section, as determined by subdivision (a), the contracting owner shall supply to the original contractor, if a lending institution is providing a construction loan, a copy certified by the county recorder of the recorded construction mortgage or deed of trust that shall disclose the amount of the construction loan. In addition, if the contracting owner is not the majority owner of the original contractor, the contracting owner shall provide security for the contracting owner's payment obligations under the construction contract. The security shall be used only when the contracting owner defaults on his or her contractual obligations to the original contractor. The security for the contracting owner's payment

obligations under the construction contract shall be provided by one of the following means:

(1) A payment bond, as defined in Section 3096, in the amount of either (A) not less than 25 percent of the total amount of any construction contract that is subject to this section where the construction contract provides that the work of improvement is scheduled to be substantially completed within six months following the commencement thereof, or (B) not less than 15 percent of the total amount of any other construction contract that is subject to this section, which payment bond shall be payable upon default by the contracting owner of any undisputed amount under the contract that has been due and payable for more than 30 days. The payment bond shall be from a California admitted surety which is either listed in the Department of the Treasury's Listing of Approved Sureties (Department Circular 570) or that has an A.M. Best rating of A or better and has an underwriting limitation, pursuant to Section 12090 of the Insurance Code, greater than the value of the contract amount of the bond.

(2) An irrevocable letter of credit from a financial institution, as defined in Section 5107 of the Financial Code, inuring to the benefit of the original contractor in the amount of either (A) not less than 25 percent of the total amount of any construction contract that is subject to this section where the construction contract provides that the work of improvement is scheduled to be substantially completed within six months following the commencement thereof, or (B) not less than 15 percent of the total amount of any other construction contract that is subject to this section. The maturity date of the letter of credit and other terms of the letter of credit shall be determined by agreement between the contracting owner, the original contractor, and the issuer of the letter of credit provided that the contracting owner shall be required to maintain the letter of credit in effect until the contracting owner has satisfied all of its payment obligations to the original contractor.

(3) (A) An escrow account, designated as a ''construction security escrow account,'' maintained with an escrow agent licensed under the Escrow Law, as set forth in Division 6 (commencing with Section 17000) of the Financial Code, or with any person exempt from the Escrow Law pursuant to paragraph (1) or (3) of subdivision (a) of Section 17006 of the Financial Code, which construction security escrow account shall be located in California and in which the contracting owner shall deposit funds in the amount provided in subparagraph (B); provided that the original contractor shall not be obligated to accept a construction security escrow account as security unless the contracting owner establishes to the reasonable satisfaction of the original contractor (which may be established by a written opinion of legal counsel for the contracting owner), that the contracting owner

has granted the original contractor a perfected, first priority security interest in the construction security escrow account and all funds deposited by the contracting owner therein and the proceeds thereof. The funds on deposit in the construction security escrow account shall be the sole property of the contracting owner, subject to the security interest in favor of the original contractor. The escrowholder shall be instructed by the contracting owner and the original contractor to hold the funds on deposit in the construction security escrow account for the purpose of perfecting the original contractor's security interest therein and to disburse those funds only upon the joint authorization of the contracting owner and the original contractor, or in accordance with an order of any court which is binding on both the owner and the original contractor. Nothing in this section shall be construed to require any construction lender to agree to deposit proceeds of a construction loan in a construction security escrow account.

(B) Prior to commencement of the work under the construction contract, the contracting owner shall make an initial deposit to the construction security escrow account in the amount of either (i) not less than 25 percent of the total amount of any construction contract which is subject to this section where the construction contract provides that the work of improvement is scheduled to be substantially completed within six months following the commencement thereof, or (ii) not less than 15 percent of the total amount of any other construction contract which is subject to this section. In addition, if the construction contract provides for a so-called retainage or retention to be withheld from periodic payments to the original contractor, the contracting owner shall deposit all amounts withheld as retainage or retention in the construction security escrow account at the same time the contracting owner makes the corresponding payment to the original contractor from which the retainage or retention is withheld provided, however, that in no event shall the amount required to be maintained on deposit in the construction security escrow account exceed the total amount of future payments remaining to be due the original contractor under its construction contract (as the same may be adjusted by agreement between the contracting owner and the original contractor). Whenever the amount of funds on deposit in the construction security escrow account equals or exceeds the total amount of future payments remaining to be due the original contractor, the contracting owner and the original contractor shall authorize the disbursement to the original contractor of funds on deposit in the construction security escrow account to pay progress payments then due the original contractor under its construction contract (in whole or in part), but in no event shall either party be obligated to authorize the disbursement of any funds that would cause the amount remaining on deposit in the construction security escrow account

following that disbursement to be less than the total amount of future payments remaining to be due the original contractor after application of any funds disbursed to the original contractor. The contracting owner and the original contractor shall authorize the disbursement to the contracting owner of any funds remaining on deposit in the construction security escrow account after the original contractor has been paid all amounts due under its construction contract. The contracting owner and the original contractor shall authorize the disbursement of funds on deposit in the construction security escrow account in accordance with the order of any court which is binding on both of them. The contracting owner and the original contractor may agree in the construction contract upon additional conditions for the disbursement of funds on deposit in the construction security escrow account provided that the conditions shall not cause the amount remaining on deposit in the construction security escrow account to be less than the amount required pursuant to this subparagraph.

(c) For the purposes of subdivision (b), in cases where the price under the construction contract is not a fixed price, the amount of security to be provided shall be determined with reference to the guaranteed maximum price, if there is one, or if there is no guaranteed maximum price, the amount of security shall be determined with reference to the contracting owner's and original contractor's good faith estimate as to the total cost anticipated to be incurred under the construction contract. Whenever any contracting owner that is required to provide security under this section with respect to a construction contract fails to provide that security or fails to maintain that security as required, the original contractor may make written demand on the contracting owner to do so, and if the contracting owner fails to provide and maintain that security within 10 days after the original contractor makes written demand on the owner, the original contractor may suspend work until the required security is provided and maintained in accordance with this section.

(d) No part of this section shall be interpreted to affect provisions in this code providing for mechanics' liens, stop notices, bond remedies, or prompt payment rights of a subcontractor, including the original contractor's payment responsibilities as set forth in Section 7108.5 of the Business and Professions Code and Section 10262 of the Public Contract Code.

(e) Nothing in this section shall apply to the construction of single-family residences, including single-family residences located within a subdivision, and any associated fixed works that require the services of a general engineering contractor, as defined in Section 7056 of the Business and Professions Code, any public works projects, or housing developments eligible for a density bonus pursuant to Section 65915 of the Government Code. As used in this section, the term

''single-family'' residence means a real property improvement used or intended to be used as a dwelling unit for one family.

(f) This section does not apply to either of the following:

(1) Any contract where the contracting owner is either a qualified publicly traded company or a wholly owned subsidiary of a qualified publicly traded company, provided that the obligations of the subsidiary under the construction contract are guaranteed by the parent which is a qualified publicly traded company. As used in this section, the term ''qualified publicly traded company'' means any company having a class of equity securities listed for trading on the New York Stock Exchange, the American Stock Exchange or the NASDAQ stock market and the nonsubordinated debt securities thereof which are rated as ''investment grade'' by either Fitch ICBA, Inc., Moody's Investor Services, Inc., Standard & Poor's Ratings Services or a similar statistical rating organization which is nationally recognized for rating the creditworthiness of publicly traded companies. If at any time prior to final payment of all sums due under the construction contract the nonsubordinated debt securities of the qualified publicly traded company are downgraded to below ''investment grade'' by one of the referenced rating agencies, the contracting owner of the property will no longer be exempt from the provisions of this section.

(2) Any contract where the contracting owner is either a qualified private company or a wholly owned subsidiary of a qualified private company, provided that the obligations of the subsidiary under the construction contract are guaranteed by the parent which is a qualified private company. As used in this section, the term ''qualified private company'' means any company that has no equity securities listed for trading on the New York Stock Exchange, the American Stock Exchange or the NASDAQ stock market, and that has a net worth determined in accordance with generally accepted accounting principles in excess of fifty million dollars ($50,000,000). If at any time prior to final payment of all sums due under the construction contract the net worth of the qualified private company is reduced below the level referenced in this section the owner of the property will no longer be exempt from the provisions of this section.

(g) It shall be against public policy to waive the provisions of this section in any contract for any private work of improvement to which this section applies.

CHAPTER 824

An act to amend Section 54.8 of, to amend and repeal Section 1375 of, and to add and repeal Section 1375.05 of, the Civil Code, to amend Sections 403.020, 403.030, 403.040, 631.3, 1010.5, 1010.6, and 1161.2 of, and to repeal and add Sections 403.050 and 403.060 of, the Code of Civil Procedure, to amend Sections 6159, 24051, 26820.6, 26827.6, 28003, 68079, 68085, 71639.1, 77003, and 77209 of, to repeal and add Section 69505 of, and to repeal Sections 29610.1, 68085.5, 69506, 71010, 71040.5, 71040.7, 71045, 71083.1, 71085.1, 72053, 74501.1, 74501.2, 74904, and 77208 of, the Government Code, to amend Section 1203.4a of the Penal Code, and to amend Sections 100, 603.5, 903.3, and 904 of the Welfare and Institutions Code, relating to courts.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 54.8 of the Civil Code is amended to read:

54.8. (a) In any civil or criminal proceeding, including, but not limited to, traffic, small claims court, family court proceedings and services, and juvenile court proceedings, in any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, or in any administrative hearing of a public agency, where a party, witness, attorney, judicial employee, judge, juror, or other participant who is hearing impaired, the individual who is hearing impaired, upon his or her request, shall be provided with a functioning assistive listening system or a computer-aided transcription system. Any individual requiring this equipment shall give advance notice of his or her need to the appropriate court or agency at the time the hearing is set or not later than five days before the hearing.

(b) Assistive listening systems include, but are not limited to, special devices which transmit amplified speech by means of audio-induction loops, radio frequency systems (AM or FM), or infrared transmission. Personal receivers, headphones, and neck loops shall be available upon request by individuals who are hearing impaired.

(c) If a computer-aided transcription system is requested, sufficient display terminals shall be provided to allow the individual who is hearing impaired to read the real-time transcript of the proceeding without difficulty.

(d) A sign shall be posted in a prominent place indicating the availability of, and how to request, an assistive listening system and a computer-aided transcription system. Notice of the availability of the systems shall be posted with notice of trials.

(e) Each superior court shall have at least one portable assistive listening system for use in any court facility within the county. When not in use, the system shall be stored in a location determined by the court.

(f) The Judicial Council shall develop and approve official forms for notice of the availability of assistive listening systems and computer-aided transcription systems for individuals who are hearing impaired. The Judicial Council shall also develop and maintain a system to record utilization by the courts of these assistive listening systems and computer-aided transcription systems.

(g) If the individual who is hearing impaired is a juror, the jury deliberation room shall be equipped with an assistive listening system or a computer-aided transcription system upon the request of the juror.

(h) A court reporter may be present in the jury deliberating room during a jury deliberation if the services of a court reporter for the purpose of operating a computer-aided transcription system are required for a juror who is hearing impaired.

(i) In any of the proceedings referred to in subdivision (a), or in any administrative hearing of a public agency, in which the individual who is hearing impaired is a party, witness, attorney, judicial employee, judge, juror, or other participant, and has requested use of an assistive listening system or computer-aided transcription system, the proceedings shall not commence until the system is in place and functioning.

(j) As used in this section, ''individual who is hearing impaired'' means an individual with a hearing loss, who, with sufficient amplification or a computer-aided transcription system, is able to fully participate in the proceeding.

(k) In no case shall this section be construed to prescribe a lesser standard of accessibility or usability than that provided by Title II of the Americans with Disabilities Act of 1990 (Public Law 101-336) and federal regulations adopted pursuant to that act.

SEC. 1.5. Section 1375 of the Civil Code is amended to read:

1375. (a) Before an association files a complaint for damages against a builder, developer, or general contractor (''respondent'') of a common interest development based upon a claim for defects in the design or construction of the common interest development, all of the requirements of this section shall be satisfied with respect to the builder, developer, or general contractor.

(b) The association shall serve upon the respondent a ''Notice of Commencement of Legal Proceeding.'' The notice shall be served by certified mail to the registered agent of the respondent, or if there is no registered agent, then to any officer of the respondent. If there are no current officers of the respondent, service shall be upon the person or entity otherwise authorized by law to receive service of process. Service

upon the general contractor shall be sufficient to initiate the process set forth in this section with regard to any builder or developer, if the builder or developer is not amenable to service of process by the foregoing methods. This notice shall toll all applicable statutes of limitation and repose, whether contractual or statutory, by and against all potentially responsible parties, regardless of whether they were named in the notice, including claims for indemnity applicable to the claim for the period set forth in subdivision (c). The notice shall include all of the following:

(1) The name and location of the project.

(2) An initial list of defects sufficient to apprise the respondent of the general nature of the defects at issue.

(3) A description of the results of the defects, if known.

(4) A summary of the results of a survey or questionnaire distributed to homeowners to determine the nature and extent of defects, if a survey has been conducted or a questionnaire has been distributed.

(5) Either a summary of the results of testing conducted to determine the nature and extent of defects or the actual test results, if that testing has been conducted.

(c) Service of the notice shall commence a period, not to exceed 180 days, during which the association, the respondent, and all other participating parties shall try to resolve the dispute through the processes set forth in this section. This 180-day period may be extended for one additional period, not to exceed 180 days, only upon the mutual agreement of the association, the respondent, and any parties not deemed peripheral pursuant to paragraph (3) of subdivision (e). Any extensions beyond the first extension shall require the agreement of all participating parties. Unless extended, the dispute resolution process prescribed by this section shall be deemed completed. All extensions shall continue the tolling period described in subdivision (b).

(d) Within 25 days of the date the association serves the Notice of Commencement of Legal Proceedings, the respondent may request in writing to meet and confer with the board of directors of the association. Unless the respondent and the association otherwise agree, there shall be not more than one meeting, which shall take place no later than 10 days from the date of the respondent's written request, at a mutually agreeable time and place. The meeting shall be subject to subdivision (b) of Section 1363.05. The discussions at the meeting are privileged communications and are not admissible in evidence in any civil action, unless the association and the respondent consent in writing to their admission.

(e) Upon receipt of the notice, the respondent shall, within 60 days, comply with the following:

(1) The respondent shall provide the association with access to, for inspection and copying of, all plans and specifications, subcontracts, and other construction files for the project that are reasonably calculated to

lead to the discovery of admissible evidence regarding the defects claimed. The association shall provide the respondent with access to, for inspection and copying of, all files reasonably calculated to lead to the discovery of admissible evidence regarding the defects claimed, including all reserve studies, maintenance records and any survey questionnaires, or results of testing to determine the nature and extent of defects. To the extent any of the above documents are withheld based on privilege, a privilege log shall be prepared and submitted to all other parties. All other potentially responsible parties shall have the same rights as the respondent regarding the production of documents upon receipt of written notice of the claim, and shall produce all relevant documents within 60 days of receipt of the notice of the claim.

(2) The respondent shall provide written notice by certified mail to all subcontractors, design professionals, their insurers, and the insurers of any additional insured whose identities are known to the respondent or readily ascertainable by review of the project files or other similar sources and whose potential responsibility appears on the face of the notice. This notice to subcontractors, design professionals, and insurers shall include a copy of the Notice of Commencement of Legal Proceeding, and shall specify the date and manner by which the parties shall meet and confer to select a dispute resolution facilitator pursuant to paragraph (1) of subdivision (f), advise the recipient of its obligation to participate in the meet and confer or serve a written acknowledgment of receipt regarding this notice, advise the recipient that it will waive any challenge to selection of the dispute resolution facilitator if it elects not to participate in the meet and confer, advise the recipient that it may be bound by any settlement reached pursuant to subdivision (d) of Section 1375.05, advise the recipient that it may be deemed to have waived rights to conduct inspection and testing pursuant to subdivision (c) of Section 1375.05, advise the recipient that it may seek the assistance of an attorney, and advise the recipient that it should contact its insurer, if any. Any subcontractor or design professional, or insurer for that subcontractor, design professional, or additional insured, who receives written notice from the respondent regarding the meet and confer shall, prior to the meet and confer, serve on the respondent a written acknowledgment of receipt. That subcontractor or design professional shall, within 10 days of service of the written acknowledgment of receipt, provide to the association and the respondent a Statement of Insurance that includes both of the following:

(A) The names, addresses, and contact persons, if known, of all insurance carriers, whether primary or excess and regardless of whether a deductible or self-insured retention applies, whose policies were in effect from the commencement of construction of the subject project to the present and which potentially cover the subject claims.

(B) The applicable policy numbers for each such policy of insurance.

(3) Any subcontractor or design professional, or insurer for that subcontractor, design professional, or additional insured, who so chooses, may, at any time, make a written request to the dispute resolution facility for designation as a peripheral party. That request shall be served contemporaneously on the association and the respondent. If no objection to that designation is received within 15 days, or upon rejection of that objection, the dispute resolution facilitator shall designate that subcontractor or design professional as a peripheral party, and shall thereafter seek to limit the attendance of that subcontractor or design professional only to those dispute resolution sessions deemed peripheral party sessions or to those sessions during which the dispute resolution facilitator believes settlement as to peripheral parties may be finalized. Nothing in this subdivision shall preclude a party who has been designated a peripheral party from being reclassified as a nonperipheral party, nor shall this subdivision preclude a party designated as a nonperipheral party from being reclassified as a peripheral party after notice to all parties and an opportunity to object. For purposes of this subdivision, a peripheral party is a party having total claimed exposure of less than twenty-five thousand dollars ($25,000).

(f) (1) Within 20 days of sending the notice set forth in paragraph (2) of subdivision (e), the association, respondent, subcontractors, design professionals, and their insurers who have been sent a notice as described in paragraph (2) of subdivision (e) shall meet and confer in an effort to select a dispute resolution facilitator to preside over the mandatory dispute resolution process prescribed by this section. Any subcontractor or design professional who has been given timely notice of this meeting but who does not participate, waives any challenge he or she may have as to the selection of the dispute resolution facilitator. The role of the dispute resolution facilitator is to attempt to resolve the conflict in a fair manner. The dispute resolution facilitator shall be sufficiently knowledgeable in the subject matter and be able to devote sufficient time to the case. The dispute resolution facilitator shall not be required to reside in or have an office in the county in which the project is located. The dispute resolution facilitator and the participating parties shall agree to a date, time, and location to hold a case management meeting of all parties and the dispute resolution facilitator, to discuss the claims being asserted and the scheduling of events under this section. The case management meeting with the dispute resolution facilitator shall be held within 100 days of service of the Notice of Commencement of Legal Proceedings at a location in the county where the project is located. Written notice of the case management meeting with the dispute resolution facilitator shall be sent by the respondent to the association, subcontractors and design professionals, and their insurers who are

known to the respondent to be on notice of the claim, no later than 10 days prior to the case management meeting, and shall specify its date, time, and location. The dispute resolution facilitator in consultation with the respondent, shall maintain a contact list of the participating parties.

(2) No later than 10 days prior to the case management meeting, the dispute resolution facilitator shall disclose to the parties all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed dispute resolution facilitator would be able to resolve the conflict in a fair manner. The facilitator's disclosure shall include the existence of any ground specified in Section 170.1 of the Code of Civil Procedure for disqualification of a judge, any attorney-client relationship the facilitator has or had with any party or lawyer for a party to the dispute resolution process, and any professional or significant personal relationship the facilitator or his or her spouse or minor child living in the household has or had with any party to the dispute resolution process. The disclosure shall also be provided to any subsequently noticed subcontractor or design professional within 10 days of the notice.

(3) A dispute resolution facilitator shall be disqualified by the court if he or she fails to comply with this paragraph and any party to the dispute resolution process serves a notice of disqualification prior to the case management meeting. If the dispute resolution facilitator complies with this paragraph, he or she shall be disqualified by the court on the basis of the disclosure if any party to the dispute resolution process serves a notice of disqualification prior to the case management meeting.

(4) If the parties cannot mutually agree to a dispute resolution facilitator, then each party shall submit a list of three dispute resolution facilitators. Each party may then strike one nominee from the other parties' list, and petition the court, pursuant to the procedure described in subdivisions (n) and (o), for final selection of the dispute resolution facilitator. The court may issue an order for final selection of the dispute resolution facilitator pursuant to this paragraph.

(5) Any subcontractor or design professional who receives notice of the association's claim without having previously received timely notice of the meet and confer to select the dispute resolution facilitator shall be notified by the respondent regarding the name, address, and telephone number of the dispute resolution facilitator. Any such subcontractor or design professional may serve upon the parties and the dispute resolution facilitator a written objection to the dispute resolution facilitator within 15 days of receiving notice of the claim. Within seven days after service of this objection, the subcontractor or design professional may petition the superior court to replace the dispute resolution facilitator. The court may replace the dispute resolution facilitator only upon a showing of good cause, liberally construed.

Failure to satisfy the deadlines set forth in this subdivision shall constitute a waiver of the right to challenge the dispute resolution facilitator.

(6) The costs of the dispute resolution facilitator shall be apportioned in the following manner: one-third to be paid by the association; one-third to be paid by the respondent; and one-third to be paid by the subcontractors and design professionals, as allocated among them by the dispute resolution facilitator. The costs of the dispute resolution facilitator shall be recoverable by the prevailing party in any subsequent litigation pursuant to Section 1032 of the Code of Civil Procedure, provided however that any nonsettling party may, prior to the filing of the complaint, petition the facilitator to reallocate the costs of the dispute resolution facilitator as they apply to any nonsettling party. The determination of the dispute resolution facilitator with respect to the allocation of these costs shall be binding in any subsequent litigation. The dispute resolution facilitator shall take into account all relevant factors and equities between all parties in the dispute resolution process when reallocating costs.

(7) In the event the dispute resolution facilitator is replaced at any time, the case management statement created pursuant to subdivision (h) shall remain in full force and effect.

(8) The dispute resolution facilitator shall be empowered to enforce all provisions of this section.

(g) (1) No later than the case management meeting, the parties shall begin to generate a data compilation showing the following information regarding the alleged defects at issue:

(A) The scope of the work performed by each potentially responsible subcontractor.

(B) The tract or phase number in which each subcontractor provided goods or services, or both.

(C) The units, either by address, unit number, or lot number, at which each subcontractor provided goods or services, or both.

(2) This data compilation shall be updated as needed to reflect additional information. Each party attending the case management meeting, and any subsequent meeting pursuant to this section, shall provide all information available to that party relevant to this data compilation.

(h) At the case management meeting, the parties shall, with the assistance of the dispute resolution facilitator, reach agreement on a case management statement, which shall set forth all of the elements set forth in paragraphs (1) to (8), inclusive, except that the parties may dispense with one or more of these elements if they agree that it is appropriate to do so. The case management statement shall provide that the following elements shall take place in the following order:

(1) Establishment of a document depository, located in the county where the project is located, for deposit of documents, defect lists, demands, and other information provided for under this section. All documents exchanged by the parties and all documents created pursuant to this subdivision shall be deposited in the document depository, which shall be available to all parties throughout the prefiling dispute resolution process and in any subsequent litigation. When any document is deposited in the document depository, the party depositing the document shall provide written notice identifying the document to all other parties. The costs of maintaining the document depository shall be apportioned among the parties in the same manner as the costs of the dispute resolution facilitator.

(2) Provision of a more detailed list of defects by the association to the respondent after the association completes a visual inspection of the project. This list of defects shall provide sufficient detail for the respondent to ensure that all potentially responsible subcontractors and design professionals are provided with notice of the dispute resolution process. If not already completed prior to the case management meeting, the Notice of Commencement of Legal Proceeding shall be served by the respondent on all additional subcontractors and design professionals whose potential responsibility appears on the face of the more detailed list of defects within seven days of receipt of the more detailed list. The respondent shall serve a copy of the case management statement, including the name, address, and telephone number of the dispute resolution facilitator, to all the potentially responsible subcontractors and design professionals at the same time.

(3) Nonintrusive visual inspection of the project by the respondent, subcontractors, and design professionals.

(4) Invasive testing conducted by the association, if the association deems appropriate. All parties may observe and photograph any testing conducted by the association pursuant to this paragraph, but may not take samples or direct testing unless, by mutual agreement, costs of testing are shared by the parties.

(5) Provision by the association of a comprehensive demand which provides sufficient detail for the parties to engage in meaningful dispute resolution as contemplated under this section.

(6) Invasive testing conducted by the respondent, subcontractors, and design professionals, if they deem appropriate.

(7) Allowance for modification of the demand by the association if new issues arise during the testing conducted by the respondent, subcontractor, or design professionals.

(8) Facilitated dispute resolution of the claim, with all parties, including peripheral parties, as appropriate, and insurers, if any, present and having settlement authority. The dispute resolution facilitators shall

endeavor to set specific times for the attendance of specific parties at dispute resolution sessions. If the dispute resolution facilitator does not set specific times for the attendance of parties at dispute resolution sessions, the dispute resolution facilitator shall permit those parties to participate in dispute resolution sessions by telephone.

(i) In addition to the foregoing elements of the case management statement described in subdivision (h), upon mutual agreement of the parties, the dispute resolution facilitator may include any or all of the following elements in a case management statement: the exchange of consultant or expert photographs; expert presentations; expert meetings; or any other mechanism deemed appropriate by the parties in the interest of resolving the dispute.

(j) The dispute resolution facilitator, with the guidance of the parties, shall at the time the case management statement is established, set deadlines for the occurrence of each event set forth in the case management statement, taking into account such factors as the size and complexity of the case, and the requirement of this section that this dispute resolution process not exceed 180 days absent agreement of the parties to an extension of time.

(k) (1) (A) At a time to be determined by the dispute resolution facilitator, the respondent may submit to the association all of the following:

(i) A request to meet with the board to discuss a written settlement offer.

(ii) A written settlement offer, and a concise explanation of the reasons for the terms of the offer.

(iii) A statement that the respondent has access to sufficient funds to satisfy the conditions of the settlement offer.

(iv) A summary of the results of testing conducted for the purposes of determining the nature and extent of defects, if this testing has been conducted, unless the association provided the respondent with actual test results.

(B) If the respondent does not timely submit the items required by this subdivision, the association shall be relieved of any further obligation to satisfy the requirements of this subdivision only.

(C) No less than 10 days after the respondent submits the items required by this paragraph, the respondent and the board of directors of the association shall meet and confer about the respondent's settlement offer.

(D) If the association's board of directors rejects a settlement offer presented at the meeting held pursuant to this subdivision, the board shall hold a meeting open to each member of the association. The meeting shall be held no less than 15 days before the association commences an action for damages against the respondent.

(E) No less than 15 days before this meeting is held, a written notice shall be sent to each member of the association specifying all of the following:

(i) That a meeting will take place to discuss problems that may lead to the filing of a civil action, and the time and place of this meeting.

(ii) The options that are available to address the problems, including the filing of a civil action and a statement of the various alternatives that are reasonably foreseeable by the association to pay for those options and whether these payments are expected to be made from the use of reserve account funds or the imposition of regular or special assessments, or emergency assessment increases.

(iii) The complete text of any written settlement offer, and a concise explanation of the specific reasons for the terms of the offer submitted to the board at the meeting held pursuant to subdivision (d) that was received from the respondent.

(F) The respondent shall pay all expenses attributable to sending the settlement offer to all members of the association. The respondent shall also pay the expense of holding the meeting, not to exceed three dollars ($3) per association member.

(G) The discussions at the meeting and the contents of the notice and the items required to be specified in the notice pursuant to paragraph (E) are privileged communications and are not admissible in evidence in any civil action, unless the association consents to their admission.

(H) No more than one request to meet and discuss a written settlement offer may be made by the respondent pursuant to this subdivision.

(*l*) Except for the purpose of in camera review as provided in subdivision (c) of Section 1375.05, all defect lists and demands, communications, negotiations, and settlement offers made in the course of the prelitigation dispute resolution process provided by this section shall be inadmissible pursuant to Sections 1119 to 1124, inclusive, of the Evidence Code and all applicable decisional law. This inadmissibility shall not be extended to any other documents or communications which would not otherwise be deemed inadmissible.

(m) Any subcontractor or design professional may, at any time, petition the dispute resolution facilitator to release that party from the dispute resolution process upon a showing that the subcontractor or design professional is not potentially responsible for the defect claims at issue. The petition shall be served contemporaneously on all other parties, who shall have 15 days from the date of service to object. If a subcontractor or design professional is released, and it later appears to the dispute resolution facilitator that it may be a responsible party in light of the current defect list or demand, the respondent shall renotice the party as provided by paragraph (2) of subdivision (e), provide a copy of the current defect list or demand, and direct the party to attend a dispute

resolution session at a stated time and location. A party who subsequently appears after having been released by the dispute resolution facilitator shall not be prejudiced by its absence from the dispute resolution process as the result of having been previously released by the dispute resolution facilitator.

(n) Any party may, at any time, petition the superior court in the county where the project is located, upon a showing of good cause, and the court may issue an order, for any of the following, or for appointment of a referee to resolve a dispute regarding any of the following:

(1) To take a deposition of any party to the process, or subpoena a third party for deposition or production of documents, which is necessary to further prelitigation resolution of the dispute.

(2) To resolve any disputes concerning inspection, testing, production of documents, or exchange of information provided for under this section.

(3) To resolve any disagreements relative to the timing or contents of the case management statement.

(4) To authorize internal extensions of timeframes set forth in the case management statement.

(5) To seek a determination that a settlement is a good faith settlement pursuant to Section 877.6 of the Code of Civil Procedure and all related authorities. The page limitations and meet and confer requirements specified in this section shall not apply to these motions, which may be made on shortened notice. Instead, these motions shall be subject to other applicable state law, rules of court, and local rules. A determination made by the court pursuant to this motion shall have the same force and effect as the determination of a postfiling application or motion for good faith settlement.

(6) To ensure compliance, on shortened notice, with the obligation to provide a Statement of Insurance pursuant to paragraph (2) of subdivision (e).

(7) For any other relief appropriate to the enforcement of the provisions of this section, including the ordering of parties, and insurers, if any, to the dispute resolution process with settlement authority.

(o) (1) A petition filed pursuant to subdivision (n) shall be filed in the superior court in the county in which the project is located. The court shall hear and decide the petition within 10 days after filing. The petitioning party shall serve the petition on all parties, including the date, time, and location of the hearing no later than five business days prior to the hearing. Any responsive papers shall be filed and served no later than three business days prior to the hearing. Any petition or response filed under this section shall be no more than three pages in length.

(2) All parties shall meet with the dispute resolution facilitator, if one has been appointed and confer in person or by the telephone prior to the

filing of that petition to attempt to resolve the matter without requiring court intervention.

(p) As used in this section:

(1) ''Association'' shall have the same meaning as defined in subdivision (a) of Section 1351.

(2) ''Builder'' means the declarant, as defined in subdivision (g) of Section 1351.

(3) ''Common interest development'' shall have the same meaning as in subdivision (c) of Section 1351, except that it shall not include developments or projects with less than 20 units.

(q) The alternative dispute resolution process and procedures described in this section shall have no application or legal effect other than as described in this section.

(r) This section shall become operative on July 1, 2002, however it shall not apply to any pending suit or claim for which notice has previously been given.

(s) This section shall become inoperative on July 1, 2010, and as of January 1, 2011, is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 1.7. Section 1375.05 is added to the Civil Code, to read:

1375.05. (a) Upon the completion of the mandatory prefiling dispute resolution process described in Section 1375, if the parties have not settled the matter, the association or its assignee may file a complaint in the superior court in the county in which the project is located. Those matters shall be given trial priority.

(b) In assigning trial priority, the court shall assign the earliest possible trial date, taking into consideration the pretrial preparation completed pursuant to Section 1375, and shall deem the complaint to have been filed on the date of service of the Notice of Commencement of Legal Proceeding described under Section 1375.

(c) Any respondent, subcontractor, or design professional who received timely prior notice of the inspections and testing conducted under Section 1375 shall be prohibited from engaging in additional inspection or testing, except if all of the following specific conditions are met, upon motion to the court:

(1) There is an insurer for a subcontractor or design professional, that did not have timely notice that legal proceedings were commenced under Section 1375 at least 30 days prior to the commencement of inspections or testing pursuant to paragraph (6) of subdivision (h) of Section 1375.

(2) The insurer's insured did not participate in any inspections or testing conducted under the provisions of paragraph (6) of subdivision (h) of Section 1375.

(3) The insurer has, after receiving notice of a complaint filed in superior court under subdivision (a), retained separate counsel, who did not participate in the Section 1375 dispute resolution process, to defend its insured as to the allegations in the complaint.

(4) It is reasonably likely that the insured would suffer prejudice if additional inspections or testing are not permitted.

(5) The information obtainable through the proposed additional inspections or testing is not available through any reasonable alternative sources.

If the court permits additional inspections or testing upon finding that these requirements are met, any additional inspections or testing shall be limited to the extent reasonably necessary to avoid the likelihood of prejudice and shall be coordinated among all similarly situated parties to ensure that they occur without unnecessary duplication. For purposes of providing notice to an insurer prior to inspections or testing under paragraph (6) of subdivision (h) of Section 1375, if notice of the proceedings was not provided by the insurer's insured, notice may be made via certified mail either by the subcontractor, design professional, association, or respondent to the address specified in the Statement of Insurance provided under paragraph (2) of subdivision (e) of Section 1375. Nothing herein shall affect the rights of an intervenor who files a complaint in intervention. If the association alleges defects that were not specified in the prefiling dispute resolution process under Section 1375, the respondent, subcontractor, and design professionals shall be permitted to engage in testing or inspection necessary to respond to the additional claims. A party who seeks additional inspections or testing based upon the amendment of claims shall apply to the court for leave to conduct those inspections or that testing. If the court determines that it must review the defect claims alleged by the association in the prefiling dispute resolution process in order to determine whether the association alleges new or additional defects, this review shall be conducted in camera. Upon objection of any party, the court shall refer the matter to a judge other than the assigned trial judge to determine if the claim has been amended in such a way as to require additional testing or inspection.

(d) Any subcontractor or design professional who had notice of the facilitated dispute resolution conducted under Section 1375 but failed to attend, or attended without settlement authority, shall be bound by the amount of any settlement reached in the facilitated dispute resolution in any subsequent trial, although the affected party may introduce evidence as to the allocation of the settlement. Any party who failed to participate in the facilitated dispute resolution because the party did not receive timely notice of the mediation shall be relieved of any obligation to participate in the settlement. Notwithstanding any privilege applicable

to the prefiling dispute resolution process provided by Section 1375, evidence may be introduced by any party to show whether a subcontractor or design professional failed to attend or attended without settlement authority. The binding effect of this subdivision shall in no way diminish or reduce a nonsettling subcontractor or design professional's right to defend itself or assert all available defenses relevant to its liability in any subsequent trial. For purposes of this subdivision, a subcontractor or design professional shall not be deemed to have attended without settlement authority because it asserted defenses to its potential liability.

(e) Notice of the facilitated dispute resolution conducted under Section 1375 must be mailed by the respondent no later than 20 days prior to the date of the first facilitated dispute resolution session to all parties. Notice shall also be mailed to each of these parties' known insurance carriers. Mailing of this notice shall be by certified mail. Any subsequent facilitated dispute resolution notices shall be served by any means reasonably calculated to provide those parties actual notice.

(f) As to the complaint, the order of discovery shall, at the request of any defendant, except upon a showing of good cause, permit the association's expert witnesses to be deposed prior to any percipient party depositions. The depositions shall, at the request of the association be followed immediately by the defendant's experts and then by the subcontractors' and design professionals' experts, except on a showing of good cause. For purposes of this section, in determining what constitutes ''good cause,'' the court shall consider, among other things, the goal of early disclosure of defects and whether the expert is prepared to render a final opinion, except that the court may modify the scope of any expert's deposition to address those concerns.

(g) (1) The only method of seeking judicial relief for the failure of the association or the respondent to complete the dispute resolution process under Section 1375 shall be the assertion, as provided for in this subdivision, of a procedural deficiency to an action for damages by the association against the respondent after that action has been filed. A verified application asserting a procedural deficiency shall be filed with the court no later than 90 days after the answer to the plaintiff's complaint has been served, unless the court finds that extraordinary conditions exist.

(2) Upon the verified application of the association or the respondent alleging substantial noncompliance with Section 1375, the court shall schedule a hearing within 21 days of the application to determine whether the association or respondent has substantially complied with this section. The issue may be determined upon affidavits or upon oral testimony, in the discretion of the court.

(3) (A) If the court finds that the association or the respondent did not substantially comply with this paragraph, the court shall stay the action for up to 90 days to allow the noncomplying party to establish substantial compliance. The court shall set a hearing within 90 days to determine substantial compliance. At any time, the court may, for good cause shown, extend the period of the stay upon application of the noncomplying party.

(B) If, within the time set by the court pursuant to this paragraph, the association or the respondent has not established that it has substantially complied with this section, the court shall determine if, in the interest of justice, the action should be dismissed without prejudice, or if another remedy should be fashioned. Under no circumstances shall the court dismiss the action with prejudice as a result of the association's failure to substantially comply with this section. In determining the appropriate remedy, the court shall consider the extent to which the respondent has complied with this section.

(h) This section shall become operative on July 1, 2002, however it shall not apply to any pending action or proceeding.

(i) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 403.020 of the Code of Civil Procedure is amended to read:

403.020. (a) If a plaintiff, cross-complainant, or petitioner files an amended complaint or other amended initial pleading that changes the jurisdictional classification from limited to unlimited, the party at the time of filing the pleading shall pay the reclassification fee provided in Section 403.060, and the clerk shall promptly reclassify the case. If the amendment changes the jurisdictional classification from unlimited to limited, no reclassification fee is required, and the clerk shall promptly reclassify the case.

(b) For purposes of this chapter, an amendment to an initial pleading shall be treated in the same manner as an amended initial pleading.

SEC. 3. Section 403.030 of the Code of Civil Procedure is amended to read:

403.030. If a party in a limited civil case files a cross-complaint that causes the action or proceeding to exceed the maximum amount in controversy for a limited civil case or otherwise fail to satisfy the requirements for a limited civil case as prescribed by Section 85, the caption of the cross-complaint shall state that the action or proceeding is a limited civil case to be reclassified by cross-complaint, or words to that effect. The party at the time of filing the cross-complaint shall pay

the reclassification fees provided in Section 403.060, and the clerk shall promptly reclassify the case.

SEC. 4. Section 403.040 of the Code of Civil Procedure is amended to read:

403.040. (a) The plaintiff, cross-complainant, or petitioner may file a motion for reclassification within the time allowed for that party to amend the initial pleading. The defendant or cross-defendant may file a motion for reclassification within the time allowed for that party to respond to the initial pleading. The court, on its own motion, may reclassify a case at any time. A motion for reclassification does not extend the moving party's time to amend or answer or otherwise respond. The court shall grant the motion and enter an order for reclassification, regardless of any fault or lack of fault, if the case has been classified in an incorrect jurisdictional classification.

(b) If a party files a motion for reclassification after the time for that party to amend that party's initial pleading or to respond to a complaint, cross-complaint, or other initial pleading, the court shall grant the motion and enter an order for reclassification only if both of the following conditions are satisfied:

(1) The case is incorrectly classified.

(2) The moving party shows good cause for not seeking reclassification earlier.

(c) If the court grants a motion for reclassification, the payment of the reclassification fee shall be determined, unless the court orders otherwise, as follows:

(1) If a case is reclassified as an unlimited civil case, the party whose pleading causes the action or proceeding to exceed the maximum amount in controversy for a limited civil case or otherwise fails to satisfy the requirements of a limited civil case under Section 85 shall pay the reclassification fee provided in Section 403.060.

(2) If a case is reclassified as a limited civil case, no reclassification fee is required.

(d) If the court grants an order for reclassification of an action or proceeding pursuant to this section, the reclassification shall proceed as follows:

(1) If the required reclassification fee is paid pursuant to Section 403.060 or no reclassification fee is required, the clerk shall promptly reclassify the case.

(2) An action that has been reclassified pursuant to this section shall not be further prosecuted in any court until the required reclassification fee is paid. If the required reclassification fee has not been paid within five days after service of notice of the order for reclassification, any party interested in the case, regardless of whether that party is named in the complaint, may pay the fee, and the clerk shall promptly reclassify the

case as if the fee had been paid as provided in Section 403.060. The fee shall then be a proper item of costs of the party paying it, recoverable if that party prevails in the action or proceeding. Otherwise, the fee shall be offset against and deducted from the amount, if any, awarded to the party responsible for the fee, if that party prevails in the action or proceeding.

(3) If the fee is not paid within 30 days after service of notice of an order of reclassification, the court on its own motion or the motion of any party may order the case to proceed as a limited civil case, dismiss the action or cross-action without prejudice on the condition that no other action or proceeding on the same matters may be commenced in any other court until the reclassification fee is paid, or take such other action as the court may deem appropriate.

(e) Nothing in this section shall be construed to require the superior court to reclassify an action or proceeding because the judgment to be rendered, as determined at the trial or hearing, is one that might have been rendered in a limited civil case.

(f) In any case where the misclassification is due solely to an excess in the amount of the demand, the excess may be remitted and the action may continue as a limited civil case.

SEC. 5. Section 403.050 of the Code of Civil Procedure is repealed.

SEC. 6. Section 403.050 is added to the Code of Civil Procedure, to read:

403.050. (a) The parties to the action or proceeding may stipulate to reclassification of the case within the time allowed to respond to the initial pleading.

(b) If the stipulation for reclassification changes the jurisdictional classification of the case from limited to unlimited, the reclassification fee provided in Section 403.060 shall be paid at the time the stipulation is filed.

(c) Upon filing of the stipulation and, if required under subdivision (b), the payment of the reclassification fee provided in Section 403.060, the clerk shall promptly reclassify the case.

SEC. 7. Section 403.060 of the Code of Civil Procedure is repealed.

SEC. 8. Section 403.060 is added to the Code of Civil Procedure, to read:

403.060. (a) The fee for reclassification of a case from a limited civil case to an unlimited civil case shall be one hundred twenty-five dollars ($125). This reclassification fee shall be in addition to any other fee due for that appearance or filing in a limited civil case. No additional amounts shall be charged for appearance or filing fees paid prior to reclassification. After reclassification, the fees ordinarily charged in an unlimited case shall be charged.

(b) If a reclassification fee is required and is not paid at the time an amended complaint or other initial pleading, a cross-complaint, or a stipulation for reclassification is filed under Section 403.020, 403.030, or 403.050, the clerk shall not reclassify the case and the case shall remain and proceed as a limited civil case.

(c) No fee shall be charged for reclassification of a case from an unlimited civil case to a limited civil case. The fees ordinarily required for filing or appearing in a limited civil case shall be charged at the time of filing a pleading that reclassifies the case. Parties are not entitled to a refund of the difference between any fees previously paid for appearance or filing in an unlimited civil case and the fees due in a limited civil case. After reclassification, the fees ordinarily charged in a limited civil case shall be charged.

SEC. 9. Section 631.3 of the Code of Civil Procedure is amended to read:

631.3. Notwithstanding any other provision of law, when a party to the litigation has deposited jury fees with the judge or clerk and that party waives a jury or obtains a continuance of the trial, or the case is settled, none of the deposit shall be refunded if the court finds there has been insufficient time to notify the jurors that the trial would not proceed at the time set. If the jury fees so deposited are not refunded for the reasons herein specified, or if a refund of jury fees deposited with the judge or clerk has not been requested, in writing, by the depositing party within 20 business days from the date on which the jury is waived or the action is settled, dismissed, or a continuance thereof granted, the fees shall be transmitted to the Controller for deposit into the Trial Court Trust Fund. All jury fees and mileage fees that may accrue by reason of a juror serving on more than one case in the same day shall be transmitted to the Controller for deposit into the Trial Court Trust Fund. All jury fees that were deposited with the court in advance of trial pursuant to Section 631 prior to January 1, 1999, and which remain on deposit in cases that were settled, dismissed, or otherwise disposed of, and three years have passed since the date the case was settled, dismissed, or otherwise disposed of, shall be transmitted to the Controller for deposit into the Trial Court Trust Fund.

SEC. 10. Section 1010.5 of the Code of Civil Procedure is amended to read:

1010.5. The Judicial Council may adopt rules permitting the filing of papers by facsimile transmission, both directly with the courts and through third parties. Notwithstanding any other provision of law, the rules may provide that the facsimile transmitted document shall constitute an original document, and that notwithstanding Section 6159 of the Government Code or Title 1.3 (commencing with Section 1747) of Part 4 of Division 3 of the Civil Code, any court authorized to accept

a credit card as payment pursuant to this section may add a surcharge to the amount of the transaction to be borne by the litigant to cover charges imposed on credit card transactions regarding fax filings between a litigant and the court.

If the Judicial Council adopts rules permitting the filing of papers by facsimile transmission, the consent of the Judicial Council shall not be necessary to permit the use of credit cards to pay fees for the filing of papers by facsimile transmission directly with the court, provided that the court charges a processing fee to the filing party sufficient to cover the cost to the court of processing payment by credit card.

SEC. 10.5. Section 1010.6 of the Code of Civil Procedure is amended to read:

1010.6. (a) A trial court may adopt local rules permitting electronic filing and service of documents, subject to rules adopted pursuant to subdivision (b) and the following conditions:

(1) A document that is filed electronically shall have the same legal effect as an original paper document.

(2) (A) When a document to be filed requires the signature, not under penalty of perjury, of an attorney or a person filing in propia persona, the document shall be deemed to have been signed by that attorney or person if filed electronically.

(B) When a document to be filed requires the signature, under penalty of perjury, of any person, the document shall be deemed to have been signed by that person if filed electronically and if a printed form of the document has been signed by that person prior to, or on the same day as, the date of filing. The attorney or person filing the document represents, by the act of filing, that the declarant has complied with this section. The attorney or person filing the document shall maintain the printed form of the document bearing the original signature and make it available for review and copying upon the request of the court or any party to the action or proceeding in which it is filed.

(3) Any document that is electronically filed with the court after the close of business on any day shall be deemed to have been filed on the next court day. ''Close of business,'' as used in this paragraph, shall mean 5 p.m. or the time at which the court would not accept filing at the court's filing counter, whichever is earlier.

(4) The court receiving a document filed electronically shall issue a confirmation that the document has been received and filed. The confirmation shall serve as proof that the document has been filed.

(5) Upon electronic filing of a complaint, petition, or other document that must be served with a summons, a trial court may electronically transmit a summons with the court seal and the case number to the party filing the complaint. Personal service of a printed form of the electronic summons shall have the same legal effect as personal service of an

original summons. If a trial court plans to electronically transmit a summons to the party filing a complaint, the court shall immediately upon receipt of the complaint notify the attorney or party that a summons will be electronically transmitted to the electronic address given by the person filing the complaint.

(6) Where notice may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the notice and any accompanying documents may be authorized when a party has agreed to accept service electronically in that action. Electronic service is complete at the time of transmission, but any period of notice or any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic transmission by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by any other statute or rule of court.

(7) The court shall permit a party or attorney to file an application for waiver of court fees and costs, in lieu of requiring the payment of the filing fee, as part of the process involving the electronic filing of a document. The court shall consider and determine the application in accordance with Section 68511.3 of the Government Code and shall not require the party or attorney to submit any documentation other than that set forth in Section 68511.3 of the Government Code. Nothing in this section shall require the court to waive a filing fee that is not otherwise waivable.

(8) If a trial court adopts rules conforming to paragraphs (1) to (7), inclusive, it may provide by order that all parties to an action file documents electronically in a class action, a consolidated action, or a group of actions, a coordinated action, or an action that is deemed complex under Judicial Council rules, provided that the trial court's order does not cause undue hardship or significant prejudice to any party in the action.

(b) By January 1, 2003, the Judicial Council shall adopt uniform rules for the electronic filing and service of documents in the trial courts of the state, which shall include statewide policies on vendor contracts, privacy, and access to public records. These rules shall conform to the conditions set forth in this section, as amended from time to time.

SEC. 11. Section 1161.2 of the Code of Civil Procedure is amended to read:

1161.2. (a) Except as provided in subdivision (g), in any case filed under this chapter as a limited civil case, the court clerk shall not allow access to the court file, index, register of actions, or other court records

until 60 days following the date the complaint is filed, except pursuant to an ex parte court order upon a showing of good cause therefor by any person including, but not limited to, a newspaper publisher. However, the clerk of the court shall allow access to the court file to a party in the action, an attorney of a party in the action, or any other person who (1) provides to the clerk the names of at least one plaintiff, one defendant, and the address, including the apartment, unit, or space number, if applicable, of the subject premises, or (2) provides to the clerk the name of one of the parties or the case number and can establish through proper identification that he or she resides at the subject premises.

(b) For purposes of this section, ''good cause'' includes, but is not limited to, the gathering of newsworthy facts by a person described in Section 1070 of the Evidence Code. It is the intent of the Legislature that a simple procedure be established to request the ex parte order described in subdivision (a).

(c) Except as provided in subdivision (g), upon the filing of any case so restricted, the court clerk shall mail notice to each defendant named in the action. The notice shall be mailed to the address provided in the complaint. The notice shall contain a statement that an unlawful detainer complaint (eviction action) has been filed naming that party as a defendant, and that access to the court file will be delayed for 60 days except to a party, an attorney for one of the parties, or any other person who (1) provides to the clerk the names of at least one plaintiff and one defendant in the action and provides to the clerk the address, including any applicable apartment, unit, or space number, of the subject premises, or (2) provides to the clerk the name of one of the parties in the action or the case number and can establish through proper identification that he or she lives at the subject premises. The notice shall also contain a statement that access to the court index, register of actions, or other records is not permitted until 60 days after the complaint is filed, except pursuant to an ex parte order upon a showing of good cause therefor. The notice shall contain on its face the name and phone number of the county bar association and the name and phone number of an office funded by the federal Legal Services Corporation that provides legal services to low-income persons in the county in which the action is filed. The notice shall state that these numbers may be called for legal advice regarding the case. The notice shall be issued between 24 and 48 hours of the filing of the complaint, excluding weekends and holidays. One copy of the notice shall be addressed to ''all occupants'' and mailed separately to the subject premises. The notice shall not constitute service of the summons and complaint.

(d) Notwithstanding any other provision of law, the court shall charge an additional fee of four dollars ($4) for filing a first appearance by the

plaintiff. This fee shall be included as part of the total filing fee for actions filed under this chapter.

(e) A municipal court or the superior court in a county in which there is no municipal court, after consultation with local associations of rental property owners, tenant groups, and providers of legal services to tenants, may exempt itself from the operation of this section upon a finding that unscrupulous eviction defense services are not a substantial problem in the judicial district. The court shall review the finding every 12 months. An exempt court shall not charge the additional fee authorized in subdivision (d).

(f) The Judicial Council shall examine the extent to which requests for access to files pursuant to an ex parte order under subdivision (a) are granted or denied, and if denied, the reason for the denial of access.

(g) This section shall not apply to a case that seeks to terminate a mobilehome park tenancy if the statement of the character of the proceeding in the caption of the complaint clearly indicates that the complaint seeks termination of a mobilehome park tenancy.

SEC. 11.5. Section 6159 of the Government Code is amended to read:

6159. (a) As used in this section:

(1) ''Credit card'' means any card, plate, coupon book, or other credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(2) ''Card issuer'' means any person, or his or her agent, who issues a credit card and purchases credit card drafts.

(3) ''Cardholder'' means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(4) ''Draft purchaser'' means any person who purchases credit card drafts.

(b) Subject to subdivision (c), a court, city, county, city and county, or other public agency may authorize the acceptance of a credit card for any of the following:

(1) The payment for the deposit of bail for any offense not declared to be a felony or for any court-ordered fee or fine. Use of a credit card pursuant to this paragraph may include a requirement that the defendant be charged any administrative fee charged by the credit card company for the cost of the credit card transaction.

(2) The payment of a filing fee or other court fee.

(3) The payment of any towage or storage costs for a vehicle that has been removed from a highway, or from public or private property, as a result of parking violations.

(4) The payment of child, family, or spousal support, including reimbursement of public assistance, related fees, costs, or penalties, with the authorization of the cardholder.

(5) The payment for services rendered by any city, county, city and county, or other public agency.

(6) The payment of any fee, charge, or tax due a city, county, city and county, or other public agency.

(c) A court desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of the Judicial Council. A city desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of its city council. Any other public agency desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of the governing body that has fiscal responsibility for that agency. After approval is obtained, a contract may be executed with one or more credit card issuers or draft purchasers. The contract shall provide for:

(1) The respective rights and duties of the court, city, county, city and county, or other public agency and card issuer or draft purchaser regarding the presentment, acceptability, and payment of credit card drafts.

(2) The establishment of a reasonable means by which to facilitate payment settlements.

(3) The payment to the card issuer or draft purchaser of a reasonable fee or discount.

(4) Any other matters appropriately included in contracts with respect to the purchase of credit card drafts as may be agreed upon by the parties to the contract.

(d) The honoring of a credit card pursuant to subdivision (b) hereof constitutes payment of the amount owing to the court, city, county, city and county, or other public agency as of the date the credit card is honored, provided the credit card draft is paid following its due presentment to a card issuer or draft purchaser.

(e) If any credit card draft is not paid following due presentment to a card issuer or draft purchaser or is charged back to the court, city, county, city and county, or other public agency for any reason, any record of payment made by the court, city, or other public agency honoring the credit card shall be void. Any receipt issued in acknowledgment of payment shall also be void. The obligation of the cardholder shall continue as an outstanding obligation as if no payment had been attempted.

(f) Notwithstanding Title 1.3 (commencing with Section 1747) of Part 4 of Division 3 of the Civil Code, a court, city, county, city and county, or any other public agency may impose a fee for the use of a credit card, not to exceed the costs incurred by the agency in providing

for payment by credit card. These costs may include, but shall not be limited to, the payment of fees or discounts as specified in paragraph (3) of subdivision (c). Any fee imposed by a court pursuant to this subdivision shall be approved by the Judicial Council. Any fee imposed by any other public agency pursuant to this subdivision for the use of a credit card shall be approved by the governing body responsible for the fiscal decisions of the public agency.

(g) Fees or discounts provided for under paragraph (3) of subdivision (c) shall be deducted or accounted for prior to any statutory or other distribution of funds received from the card issuer or draft purchaser to the extent not recovered from the cardholder pursuant to subdivision (f).

(h) The Judicial Council may enter into a master agreement with one or more credit card issuers or draft purchasers for the acceptance and payment of credit card drafts received by the courts. Any court may join in any of these master agreements or may enter into a separate agreement with a credit card issuer or draft purchaser.

SEC. 12. Section 24051 of the Government Code is amended to read:

24051. On or before July 10th in each year, or at any other interval designated by the board of supervisors, each county officer or person in charge of any office, department, service, or institution of the county, and the executive head of each special district whose affairs and funds are under the supervision and control of the board of supervisors or for which the board is ex officio the governing body shall file with the county clerk, or with the county auditor, according to the procedure prescribed by the board, an inventory under oath, showing in detail all county property in his or her possession or in his or her charge at the close of business on the preceding June 30th. By ordinance the board of supervisors may prescribe an annual or any other period, provided that the period shall not be in excess of three years, for preparation of the inventory and a correspondingly different date for its filing, and may prescribe the manner and form in which the inventory shall be compiled. The inventories shall be kept of record by the county clerk or auditor for at least five years. Any inventory which has been on file for five years or more may be destroyed on order of the board of supervisors. A true copy of the inventory shall be delivered by the person who made it to his or her successor in office, who shall receipt for it. The receipt shall be filed with the county clerk or county auditor.

SEC. 13. Section 26820.6 of the Government Code is amended to read:

26820.6. The term ''total fee'' as used in Sections 26820.4, 26826, and 26827, includes the amount allocated to the Judges' Retirement Fund pursuant to Section 26822.3, the vital statistic fee imposed pursuant to Section 26859, the fee for the automation and conversion of

court records imposed pursuant to Section 26863, any construction fee imposed pursuant to Section 76238, and the law library fee established pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code. The term ''total fee'' as used in Sections 26820.4, 26826, and 26827, also includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code, but the Judicial Council may authorize any trial court to exclude any portion of this dispute resolution fee from the term ''total fee.''

SEC. 14. Section 26827.6 of the Government Code is amended to read:

26827.6. (a) The fee for receiving and storing a document transferred to the clerk of the superior court under Section 732 of the Probate Code is ten dollars ($10), unless the court determines that ten dollars ($10) is less than the direct cost of making a photograph, microphotograph, photocopy, or electronic image of the document, if any, and the direct cost of indexing and long-term storage of the document or its photograph, microphotograph, photocopy, or electronic image. Any determination made by a court under this subdivision shall be valid only if either (1) made under procedures adopted by the Judicial Council or (2) approved by the Judicial Council.

(b) If the court makes the determination provided in subdivision (a), the court may set a fee for receiving and storing a document that exceeds ten dollars ($10), but that fee shall not exceed the direct costs specified in subdivision (a).

(c) The superior court may reduce or waive the fee established pursuant to this section under either of the following circumstances:

(1) The court has assumed jurisdiction under Article 11 (commencing with Section 6180) of Chapter 4 of Division 3 of the Business and Professions Code over the law practice of the attorney with whom the document is deposited.

(2) On a showing of hardship.

SEC. 15. Section 28003 of the Government Code is amended to read:

28003. (a) In any county the board of supervisors may by ordinance fix a date or schedule of dates for the payment of salaries of the officers, deputies, clerks, and employees of the several departments and institutions of the county government.

(b) If the county processes the payroll of the trial courts in that county, the board of supervisors shall also fix a date or schedule of dates for the payment of salaries of those judges and other officers and employees of the trial courts whose salaries are processed by the county.

(c) In any court that processes its own payroll, the court shall fix a date or schedule of dates for the payment of the salaries of the judges and other officers and the employees of that court.

(d) Nothing in this section shall affect the processing by the state of payroll for judges.

SEC. 16. Section 29610.1 of the Government Code is repealed.

SEC. 17. Section 68079 of the Government Code is amended to read:

68079. A court for which the necessary seal has not been provided, or the judge or judges of that court, shall provide it. The expense shall be an item of court operations. Until the seal is provided the clerk or judge of each court may use his or her private seal whenever a seal is required.

SEC. 18. Section 68085 of the Government Code is amended to read:

68085. (a) (1) There is hereby established the Trial Court Trust Fund, the proceeds of which shall be apportioned at least quarterly for the purpose of funding trial court operations, as defined in Section 77003. In no event shall apportionment payments exceed 30 percent of the total annual apportionment to the Trial Court Trust Fund for state trial court funding in any 90-day period.

(2) The apportionment payments shall be made by the Controller. For fiscal year 1997–98, the Controller shall make the first apportionment payment within 10 days of the operative date of this section. The final payment from the Trial Court Trust Fund for each fiscal year shall be made on or before August 31 of the subsequent fiscal year.

(3) If apportionment payments are made on a quarterly basis, the payments shall be on July 15, October 15, January 15, and April 15. In addition to quarterly payments, a final payment from the Trial Court Trust Fund for each fiscal year may be made on or before August 31 of the subsequent fiscal year.

(b) Notwithstanding any other provision of law, the fees listed in subdivision (c) shall all be deposited upon collection in a special account in the county treasury, and transmitted herefrom monthly to the Controller for deposit in the Trial Court Trust Fund.

(c) (1) Except as specified in subdivision (d), this section applies to all fees collected pursuant to Sections 631.3, 116.230, and 403.060 of the Code of Civil Procedure and Sections 26820.4, 26823, 26826, 26826.01, 26827, 26827.4, 26830, 26832.1, 26833.1, 26835.1, 26836.1, 26837.1, 26838, 26850.1, 26851.1, 26852.1, 26853.1, 26855.4, 26862, 27081.5, 68086, 72055, 72056, 72056.01, and 72060.

(2) If any of the fees provided for in this subdivision are partially waived by court order, and the fee is to be divided between the Trial Court Trust Fund and any other fund, the amount of the partial waiver

shall be deducted from the amount to be distributed to each fund in the same proportion as the amount of each distribution bears to the total amount of the fee.

(3) Any amounts transmitted by a county to the Controller for deposit into the Trial Court Trust Fund from fees collected pursuant to Section 27361 between January 1, 1998, and the effective date of this paragraph shall be credited against the total amount the county is required to pay to the state pursuant to paragraph (2) of subdivision (b) of Section 77201 for the 1997–98 fiscal year.

(d) This section does not apply to that portion of a filing fee collected pursuant to Section 26820.4, 26826, 26827, 72055, or 72056 which is allocated for dispute resolution pursuant to Section 470.3 of the Business and Professions Code, the county law library pursuant to Section 6320 of the Business and Professions Code, the Judges' Retirement Fund pursuant to Section 26822.3, automated recordkeeping or conversion to micrographics pursuant to Sections 26863 and 68090.7, and courthouse financing pursuant to Section 76238. This section also does not apply to fees collected pursuant to subdivisions (a) and (c) of Section 27361.

(e) This section applies to all payments required to be made to the State Treasury by any county or city and county pursuant to Section 77201, 77201.1, or 77205.

(f) Notwithstanding any other provision of law, no agency shall take action to change the amounts allocated to any of the above funds.

(g) Before making any apportionments under this section, the Controller shall deduct, from the annual appropriation for that purpose, the actual administrative costs that will be incurred under this section. Costs reimbursed under this section shall be determined on an annual basis in consultation with the Judicial Council.

(h) Any amounts required to be transmitted by a county or city and county to the state pursuant to this section shall be remitted to the Controller no later than 45 days after the end of the month in which the fees were collected. This remittance shall be accompanied by a remittance advice identifying the collection month and the appropriate account in the Trial Court Trust Fund to which it is to be deposited. Any remittance which is not made by the county or city and county in accordance with this section shall be considered delinquent, and subject to the penalties specified in this section.

(i) Upon receipt of any delinquent payment required pursuant to this section, the Controller shall calculate a penalty on any delinquent payment by multiplying the amount of the delinquent payment at a daily rate equivalent to $1^1/_2$ percent per month for the number of days the payment is delinquent. Notwithstanding Section 77009, any penalty on a delinquent payment that a court is required to reimburse to a county's

general fund pursuant to this section and Section 24353 shall be paid from the Trial Court Operations Fund for that court.

(j) Penalty amounts calculated pursuant to subdivision (i) shall be paid by the county to the Trial Court Trust Fund no later than 45 days after the end of the month in which the penalty was calculated.

(k) The Trial Court Trust Fund shall be invested in the Surplus Money Investment Fund and all interest earned shall be allocated to the Trial Court Trust Fund semiannually and shall be allocated among the courts in accordance with the requirements of subdivision (a). The specific allocations shall be specified by the Judicial Council, based upon recommendations from the Trial Court Budget Commission.

(*l*) It is the intent of the Legislature that the revenues required to be deposited into the Trial Court Trust Fund be remitted as soon after collection by the courts as possible. Not later than February 1, 2001, the Judicial Council, in consultation with the California State Association of Counties and the California County Auditors Association, shall study and make recommendations to the Legislature on alternative procedures that would improve the collection and remittance of revenues to the Trial Court Trust Fund.

SEC. 19. Section 68085.5 of the Government Code is repealed.

SEC. 20. Section 69505 of the Government Code is repealed.

SEC. 21. Section 69505 is added to the Government Code, to read:

69505. Notwithstanding any other provision of law to the contrary, the following procedures shall apply for business-related travel expenses of judges and employees of the trial courts:

(a) The Administrative Director of the Courts shall annually recommend policies and schedules for reimbursement of travel expenses and procedures for processing these requests, which shall be approved by the Judicial Council and shall be followed by the trial courts.

(b) Each court shall develop a system for presentation and approval of requests that shall ensure that requests are reviewed in an impartial and appropriate manner and that conforms to the policies, schedules, and procedures approved by the Judicial Council.

(c) The cost of the approved requests shall be paid from that court's Trial Court Operations Fund.

SEC. 22. Section 69506 of the Government Code is repealed.

SEC. 23. Section 71010 of the Government Code is repealed.

SEC. 24. Section 71040.5 of the Government Code is repealed.

SEC. 25. Section 71040.7 of the Government Code is repealed.

SEC. 26. Section 71045 of the Government Code is repealed.

SEC. 27. Section 71083.1 of the Government Code is repealed.

SEC. 28. Section 71085.1 of the Government Code is repealed.

SEC. 29. Section 72053 of the Government Code is repealed.

SEC. 30. Section 74501.1 of the Government Code is repealed.

SEC. 31. Section 74501.2 of the Government Code is repealed.

SEC. 32. Section 74904 of the Government Code is repealed.

SEC. 32.5. Section 71639.1 of the Government Code is amended to read:

71639.1. (a) Each trial court shall adopt a procedure to be used as a preliminary step before petitioning the superior court for relief pursuant to subdivision (c) or (d). The procedure may be mediation, arbitration, or a procedure before an administrative tribunal, such as the procedure established pursuant to Sections 71653 and 71654 for review of the decision of the hearing officer in evidentiary due process hearings. The establishment of the procedure shall be subject to the obligation to meet and confer in good faith. However, nothing in this section shall prohibit a party from seeking provisional relief, such as a stay, in any case in which provisional relief would otherwise be appropriate.

(b) In a trial court with 10 or more judges, if the trial court and a recognized employee organization reach an impasse regarding development of a procedure required pursuant to subdivision (a), the trial court shall adopt either nonbinding arbitration or a proceeding before the administrative tribunal, such as the procedure established pursuant to Sections 71653 and 71654, for review of the decision of the hearing officer in evidentiary due process or hearings.

(c) Notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, and except as required pursuant to Section 5 of Article VI of the California Constitution, any agreements reached pursuant to negotiations held pursuant to this article are binding on the parties and may be enforced by petitioning the superior court for relief pursuant to Section 1085 or 1103 of the Code of Civil Procedure.

(d) Notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, if a trial court, a trial court employee, or an employee organization believes there has been a violation of this article, that party may petition the superior court for relief.

(e) The Judicial Council shall adopt rules of court to implement this hearing and appeal process. The rules of court shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear these matters, as specified in the rules of court, from which a single justice shall be assigned to hear the matter in the superior court. The rules of court shall provide that these matters shall be heard in the superior court and the court of appeal on an expedited basis, and to the extent permitted by law or rule of court, shall provide that any justice assigned to hear the matter in the superior court shall not be from the court of appeal district in which the action is filed, and shall provide

that appeals in these matters shall be heard in the court of appeal district where the matter was filed.

(f) A complete alternative to the procedure outlined in subdivisions (c), (d), and (e) may be provided for by mutual agreement between a trial court and representatives of recognized employee organizations.

(g) A court decision interpreting or applying this article shall not be binding in cases or proceedings arising under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.

SEC. 33. Section 77003 of the Government Code is amended to read:

77003. (a) As used in this chapter, ''court operations'' means all of the following:

(1) Salaries, benefits, and public agency retirement contributions for superior and municipal court judges and for subordinate judicial officers. For purposes of this paragraph, ''subordinate judicial officers'' includes all commissioner or referee positions created prior to July 1, 1997, including positions created in the municipal court prior to July 1, 1997, which thereafter became positions in the superior court as a result of unification of the municipal and superior courts in a county, and including those commissioner positions created pursuant to Sections 69904, 70141, 70141.9, 70142.11, 72607, 73794, 74841.5, and 74908; and includes any staff who provide direct support to commissioners; but does not include commissioners or staff who provide direct support to the commissioners whose positions were created after July 1, 1997, unless approved by the Judicial Council, subject to availability of funding.

(2) The salary, benefits, and public agency retirement contributions for other court staff including all municipal court staff positions specifically prescribed by statute.

(3) Those marshals and sheriffs as the court deems necessary for court operations.

(4) Court-appointed counsel in juvenile court dependency proceedings and counsel appointed by the court to represent a minor pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code.

(5) Services and supplies relating to court operations.

(6) Collective bargaining under the Meyers-Milias-Brown Act or Sections 2201 to 2210, inclusive, of the California Rules of Court with respect to court employees specified in Section 3501.5.

(7) Actual indirect costs for county and city and county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to statute; courthouse construction; district attorney services; probation

services; indigent criminal defense; grand jury expenses and operations; and pretrial release services.

(8) Except as provided in subdivision (b), other matters listed as court operations in Rule 810 of the California Rules of Court as it read on July 1, 1996.

(b) However, ''court operations'' does not include collection enhancements as defined in Rule 810 of the California Rules of Court as it read on July 1, 1996.

SEC. 33.5. Section 77003 of the Government Code is amended to read:

77003. (a) As used in this chapter, ''court operations'' means all of the following:

(1) Salaries, benefits, and public agency retirement contributions for superior and municipal court judges and for subordinate judicial officers. For purposes of this paragraph, ''subordinate judicial officers'' includes all commissioner or referee positions created prior to July 1, 1997, including positions created in the municipal court prior to July 1, 1997, which thereafter became positions in the superior court as a result of unification of the municipal and superior courts in a county, and including those commissioner positions created pursuant to Sections 69904, 70141, 70141.9, 70142.11, 72607, 73794, 74841.5, and 74908; and includes any staff who provide direct support to commissioners; but does not include commissioners or staff who provide direct support to the commissioners whose positions were created after July 1, 1997, unless approved by the Judicial Council, subject to availability of funding.

(2) The salary, benefits, and public agency retirement contributions for other court staff including all municipal court staff positions specifically prescribed by statute.

(3) Those marshals and sheriffs as the court deems necessary for court operations.

(4) Court-appointed counsel in juvenile court dependency proceedings and counsel appointed by the court to represent a minor pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code.

(5) Services and supplies relating to court operations.

(6) Collective bargaining under Sections 71630 and 71639.3 with respect to court employees.

(7) Subject to paragraph (1) of subdivision (d) of Section 77212, actual indirect costs for county and city and county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to statute; courthouse construction; district attorney services; probation

services; indigent criminal defense; grand jury expenses and operations; and pretrial release services.

(8) Except as provided in subdivision (b), other matters listed as court operations in Rule 810 of the California Rules of Court as it read on July 1, 1996.

(b) However, ''court operations'' does not include collection enhancements as defined in Rule 810 of the California Rules of Court as it read on July 1, 1996.

SEC. 34. Section 77208 of the Government Code is repealed.

SEC. 35. Section 77209 of the Government Code is amended to read:

77209. (a) There is in the State Treasury the Trial Court Improvement Fund.

(b) The Judicial Council shall reserve funds for the following projects by allocating 1 percent of the annual appropriation for the trial courts to the Trial Court Improvement Fund as follows:

(1) At least one-half of 1 percent of the total appropriation for trial court operations shall be set aside as a reserve which shall not be allocated prior to March 15 of each year unless allocated to a court or courts for urgent needs.

(2) Up to one-quarter of 1 percent of the total appropriation for trial court operations may be allocated from the fund to courts which have fully unified to the extent permitted by law and which meet additional criteria as may be established by the Judicial Council.

(3) Up to one-quarter of 1 percent of the total appropriation for trial court operations may be allocated from the fund for statewide projects or programs for the benefit of the trial courts.

(c) Any funds in the Trial Court Improvement Fund that are unencumbered at the end of the fiscal year shall be reappropriated to the Trial Court Improvement Fund for the following fiscal year.

(d) Moneys deposited in the Trial Court Improvement Fund shall be placed in an interest bearing account. Any interest earned shall accrue to the fund and shall be disbursed pursuant to subdivision (e).

(e) Moneys deposited in the Trial Court Improvement Fund may be disbursed for purposes of this section.

(f) Moneys deposited in the Trial Court Improvement Fund pursuant to Section 68090.8 shall be allocated by the Judicial Council for automated recordkeeping system improvements pursuant to that section and in furtherance of Rule 991 of the California Rules of Court, as it read on July 1, 1996.

(g) Moneys deposited in the Trial Court Improvement Fund shall be administered by the Judicial Council. The Judicial Council may, with appropriate guidelines, delegate to the Administrative Director of the Courts the administration of the fund. Moneys in the fund may be

expended to implement trial court projects approved by the Judicial Council. Expenditures may be made to vendors or individual trial courts that have the responsibility to implement approved projects.

(h) Notwithstanding other provisions of this section, the 2 percent automation fund moneys deposited in the Trial Court Improvement Fund pursuant to Section 68090.8 shall be allocated by the Judicial Council to individual courts of the counties for deposit in the Trial Court Operations Fund of the county from which the money was collected in an amount not less than the revenues collected in the local 2 percent automation funds in fiscal year 1994–95. The Judicial Council shall allocate the remainder of the moneys deposited in the Trial Court Improvement Fund as specified in this section.

For the purposes of this subdivision, the term ''2 percent automation fund'' means the fund established pursuant to Section 68090.8 as it read on June 30, 1996.

(i) The Judicial Council shall present an annual report to the Legislature on the use of the Trial Court Improvement Fund. The report shall include appropriate recommendations.

SEC. 36. Section 1203.4a of the Penal Code is amended to read:

1203.4a. (a) Every defendant convicted of a misdemeanor and not granted probation shall, at any time after the lapse of one year from the date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her plea of guilty or nolo contendere and enter a plea of not guilty; or if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 12021.1 of this code or Section 13555 of the Vehicle Code. The defendant shall be informed of the provisions of this section, either orally or in writing, at the time he or she is sentenced. The defendant may make an application and change of plea in person or by attorney, or by the probation officer authorized in writing; provided, that in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if relief had not been granted pursuant to this section.

This subdivision applies to convictions which occurred before as well as those occurring after, the effective date of this section.

(b) Subdivision (a) does not apply to any misdemeanor falling within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, or to any infraction.

(c) A person who petitions for a dismissal of a charge under this section may be required to reimburse the county and the court for the cost of services rendered at a rate to be determined by the county board of supervisors for the county and by the court for the court, not to exceed sixty dollars ($60), and to reimburse any city for the cost of services rendered at a rate to be determined by the city council not to exceed sixty dollars ($60). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (f) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

(d) Any determination of amount made by a court under this section shall be valid only if either (1) made under procedures adopted by the Judicial Council or (2) approved by the Judicial Council.

SEC. 37. Section 100 of the Welfare and Institutions Code is amended to read:

100. The Judicial Council shall establish a planning and advisory group consisting of appropriate professional and program specialists to recommend on the development of program guidelines and funding procedures consistent with this chapter. At a minimum, the council shall adopt program guidelines consistent with the guidelines established by the National Court Appointed Special Advocate Association, and with California law; but the council may require additional or more stringent standards. State funding shall be contingent on a program adopting and adhering to the program guidelines adopted by the council.

The program guidelines adopted by the council shall be adopted and incorporated into local rules of court by each participating superior court as a prerequisite to funding pursuant to this chapter.

The council shall adopt program guidelines and criteria for funding which encourage multicounty CASA programs where appropriate, and shall in no case provide for funding more than one program per county.

The council shall establish in a timely fashion a request-for-proposal process to establish, maintain, or expand local CASA programs and require local matching funds or in-kind funds equal to the proposal request. The maximum state grant per county program per year shall not exceed seventy thousand dollars ($70,000) in counties in which the population is less than 700,000 and shall not exceed one hundred thousand dollars ($100,000) in counties in which the population is

700,000 or more, according to the annual population report provided by the Department of Finance.

SEC. 38. Section 603.5 of the Welfare and Institutions Code is amended to read:

603.5. (a) Notwithstanding any other provision of law, in counties which adopt the provisions of this section, jurisdiction over the case of a minor alleged to have committed only a violation of the Vehicle Code classified as an infraction or a violation of a local ordinance involving the driving, parking, or operation of a motor vehicle, is with the municipal court or the superior court in a county in which there is no municipal court, except that the court may refer to the juvenile court for adjudication, cases involving a minor who has been adjudicated a ward of the juvenile court, or who has other matters pending in the juvenile court.

(b) The cases specified in subdivision (a) shall not be governed by the procedures set forth in the juvenile court law.

(c) Any provisions of juvenile court law requiring that confidentiality be observed as to cases and proceedings, prohibiting or restricting the disclosure of juvenile court records, or restricting attendance by the public at juvenile court proceedings shall not apply. The procedures for bail specified in Chapter 1 (commencing with Section 1268) of Title 10 of Part 2 of the Penal Code shall apply.

(d) The provisions of this section shall apply in a county in which the trial courts make the section applicable as to any matters to be heard and the court has determined that there is available funding for any increased costs.

SEC. 39. Section 903.3 of the Welfare and Institutions Code is amended to read:

903.3. (a) The father, mother, spouse, or other person liable for the support of a minor person, the person himself or herself if he or she is an adult, or the estates of those persons shall, unless indigent, be liable for the cost to the county and court for any investigation related to the sealing and for the sealing of any juvenile court or arrest records pursuant to Section 781 pertaining to that person. The liability of those persons and estates shall be a joint and several liability.

(b) In the event a petition is filed for an order sealing a record, the father, mother, spouse, or other person liable for the support of a minor, that person if he or she is an adult, or the estate of that person, may be required to reimburse the county and court for the actual cost of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors for the county and by the court for the court, not to exceed one hundred twenty dollars ($120). Ability to make this reimbursement shall be determined by the court using the standards set forth in

paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services.

(c) Notwithstanding subdivision (a), the father, mother, spouse, or other person liable for the support of the minor, the person himself or herself if he or she is an adult, 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.

(d) Any determination of amount made by a court under this section shall be valid only if either (1) made under procedures adopted by the Judicial Council or (2) approved by the Judicial Council.

SEC. 40. Section 904 of the Welfare and Institutions Code is amended to read:

904. The monthly or daily charge, not to exceed cost, for care, support, and maintenance of minor persons placed or detained in or committed to any institution by order of a juvenile court, the cost of delinquency-related legal services referred to by Section 903.1, the cost of probation supervision referred to by Section 903.2, and the cost of sealing records in county or local agency custody referred to by Section 903.3 shall be determined by the board of supervisors. The cost of dependency-related legal services referred to by Section 903.1 and the cost of sealing records in court custody referred to by Section 903.3 shall be determined by the court. Any determination made by a court under this section shall be valid only if either (1) made under procedures adopted by the Judicial Council or (2) approved by the Judicial Council.

SEC. 41. Section 33.5 of this bill incorporates amendments to Section 77003 of the Government Code proposed by both this bill and AB 223. 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 77003 of the Government Code, and (3) this bill is enacted after AB 223, in which case Section 33 of this bill shall not become operative.

SEC. 42. 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 825

An act to amend Section 5440 of, and to add Section 5442.11 to, the Business and Professions Code, to amend Section 11011.18 of, to add Section 14102 to, and to repeal Section 14529.3 of, the Government Code, to amend Section 20351 of the Public Contract Code, to amend Sections 120222 and 125223 of the Public Utilities Code, to amend Sections 302 and 325 of, and to add Section 301.5 to, the Streets and Highways Code, and to amend Sections 4000.6, 5014.1, 5017, 6700.2, 9400.1, 9410, 9862.5, 12509, 16020, 16028, 20002, and 34672 of, and to add Section 24612 to, the Vehicle Code, relating to transportation.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 5440 of the Business and Professions Code is amended to read:

5440. Except as provided in Sections 5441, 5442, 5442.7, 5442.8, 5442.9, 5442.10, and 5442.11, no advertising display may be placed or maintained on property adjacent to a section of a freeway that has been landscaped if the advertising display is designed to be viewed primarily by persons traveling on the main-traveled way of the landscaped freeway.

SEC. 2. Section 5442.11 is added to the Business and Professions Code, to read:

5442.11. Notwithstanding any other provision of this chapter, Section 5440 does not apply to any advertising display in the Mid-City Recovery Redevelopment Project Area within the City of Los Angeles if all of the following conditions are met:

(a) Not more than four advertising displays, whose placement or maintenance is otherwise prohibited under this chapter, may be erected if approved by the Community Redevelopment Agency of the City of Los Angeles as part of an owner-participation agreement or disposition and development agreement.

(b) All four advertising displays meet the requirements set forth in Section 5405 and 5408.

(c) Placement or maintenance of each advertising display does not require the immediate trimming, pruning, topping, or removal of trees located on a state highway right-of-way to provide visibility to the advertising display, unless done as part of the normal landscape maintenance activities that would have been undertaken without regard to the placement of the display.

(d) No advertising display shall advertise products or services that are directed at an adult population, including, but not limited to, alcohol, tobacco, gambling, or sexually explicit material.

(e) If any advertising display erected pursuant to this section is removed for purposes of a transportation project undertaken by the department, the display owner is entitled to relocate that display and is not entitled to monetary compensation for the removal or relocation.

(f) The advertising display shall not cause a reduction in federal aid highway funds as provided in Section 131 of Title 23 of the United States Code.

SEC. 3. Section 11011.18 of the Government Code is amended to read:

11011.18. The Department of Transportation, by July 1, 2002, shall furnish to the Department of General Services a record of each parcel of real property that it possesses, including lands, buildings, office buildings, maintenance stations, equipment yards, and parking facilities. This furnishing requirement does not apply to existing highways, airspace, excess lands, and properties acquired for highway projects. The record shall be furnished by the Department of Transportation to the Department of General Services in a uniform format specified by the Department of General Services. The Department of General Services shall consult with the Department of Transportation on the development of the uniform format. The Department of Transportation shall update its record of these real property holdings, reflecting any changes, by July 1 of each year. The record shall include the following information:

(a) The location of the property within the state and county, the size of the property, including its acreage, and any other relevant property data.

(b) The date of acquisition of the real property, if available.

(c) The manner in which the property was acquired and the purchase price, if available.

(d) A description of the current uses of the property and any projected future uses, if available.

(e) A concise description of each major structure on the property.

SEC. 3.5. Section 14102 is added to the Government Code, to read:

14102. The State Energy Resources Conservation and Development Commission, in consultation with the department, shall study the potential cost-effectiveness and energy efficiency of utilizing retroreflective sheeting materials on highway signs. In completing the study, that commission shall review any existing studies to the extent feasible and report its findings to the Legislature on or before May 1, 2002.

SEC. 4. Section 14529.3 of the Government Code, as added by Chapter 783 of the Statutes of 1999, is repealed.

SEC. 5. Section 20351 of the Public Contract Code is amended to read:

20351. Contracts for the construction in excess of fifty thousand dollars ($50,000) shall be awarded to the lowest responsible bidder after competitive bidding, except in emergency declared by the vote of two-thirds of the membership of the board.

SEC. 5.2. Section 120222 of the Public Utilities Code is amended to read:

120222. Contracts for the purchase of supplies, equipment, and materials in excess of fifty thousand dollars ($50,000) shall be awarded to the lowest responsible bidder submitting a responsive bid after competitive bidding, except in emergency declared by the vote of two-thirds of the membership of the board. When the expected purchase contract exceeds two thousand five hundred dollars ($2,500) and does not exceed fifty thousand dollars ($50,000), the board shall seek a minimum of three quotations, either written or oral, which permit prices and other terms to be compared.

SEC. 5.3. Section 125223 of the Public Utilities Code is amended to read:

125223. Contracts for the purchase of supplies, equipment, and materials in excess of fifty thousand dollars ($50,000) shall be awarded to the lowest responsible bidder after competitive bidding, except in an emergency declared by the vote of two-thirds of the membership of the board.

SEC. 5.7. Section 301.5 is added to the Streets and Highways Code, to read:

301.5. The commission may relinquish to the City of Newport Beach the portion of Route 1 that is located between Jamboree Road and the southern city limits of the City of Newport Beach, upon terms and conditions the commission finds to be in the best interests of the state.

(a) A relinquishment under this section 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.

(b) On and after the effective date of the relinquishment, both of the following shall occur:

(1) The portion of Route 1 relinquished under this section shall cease to be a state highway.

(2) The portion of Route 1 relinquished under this section shall be ineligible for future adoption under Section 81.

(c) The City of Newport Beach shall ensure the continuity of traffic flow on the relinquished portions of Route 1, including, but not limited to, any traffic signal progression.

(d) For those portions of Route 1 that are relinquished, the City of Newport Beach shall maintain within its jurisdiction signs directing motorists to the continuation of Route 1.

SEC. 6. Section 302 of the Streets and Highways Code is amended to read:

302. (a) Route 2 is from:

(1) The point where Santa Monica Boulevard crosses the city limits of the City of Santa Monica at Centinela Avenue to Route 101 in Los Angeles.

(2) Route 101 in Los Angeles to Route 210 in La Canada Flintridge via Glendale.

(3) Route 210 in La Canada Flintridge to Route 138 via Wrightwood.

(b) Upon a determination by the commission that it is in the best interests of the state to do so, the commission may, upon terms and conditions approved by it, relinquish that portion or portions of Route 2 located within the City of West Hollywood or the City of Santa Monica, or both, to that city or cities, upon agreement by the city or cities to accept the relinquishment or relinquishments. A relinquishment shall be effective on the date specified in the commission's approved terms and conditions with the respective city. Thereafter, Route 2 shall not include the portion or portions so relinquished, nor shall the portion or portions be considered for future adoption in accordance with Section 81. For portions of Route 2 that are so relinquished, the City of West Hollywood or the City of Santa Monica, or both, shall maintain within their respective jurisdictions signs directing motorists to the continuation of State Highway Route 2.

(c) (1) Notwithstanding subdivision (a), the commission may relinquish to the City of Los Angeles the portion of Route 2 that is located between Route 405 and Moreno Drive in that city, upon terms and conditions the commission finds to be in the best interests of the state.

(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.

(3) On and after the effective date of the relinquishment, both of the following shall occur:

(A) The portion of Route 2 relinquished under this subdivision shall cease to be a state highway.

(B) The portion of Route 2 relinquished under this subdivision shall be ineligible for future adoption under Section 81.

(4) For those portions of Route 2 that are relinquished, the City of Los Angeles shall maintain within its jurisdiction signs directing motorists to the continuation of Route 2.

SEC. 7. Section 325 of the Streets and Highways Code is amended to read:

325. Route 25 is from Route 198 to Route 101, near Gilroy.

SEC. 7.3. Section 4000.6 of the Vehicle Code is amended to read:

4000.6. Any commercial motor vehicle, singly or in combination, that operates with a declared gross vehicle weight that exceeds 10,000 pounds shall be registered pursuant to Section 9400.1.

(a) A person submitting an application for registration of a commercial motor vehicle operated in combination with a semitrailer, trailer, or any combination thereof, shall include the declared combined gross weight of all units when applying for registration with the department, except as exempted under subdivision (a) of Section 9400.1.

(b) This section does not apply to pickups nor to any commercial motor vehicle or combination that does not exceed 10,000 pounds gross vehicle weight.

(c) Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, having reason to believe that a motor vehicle, singly or in combination, is being operated in excess of its registered declared gross vehicle weight, may require the driver to stop and submit to an inspection or weighing of the vehicle or vehicles and an inspection of registration documents.

SEC. 7.5. Section 4000.6 of the Vehicle Code is amended to read:

4000.6. Any commercial motor vehicle, singly or in combination, that operates with a declared gross vehicle or combined gross weight that exceeds 10,000 pounds shall be registered pursuant to Section 9400.1.

(a) A person submitting an application for registration of a commercial motor vehicle operated in combination with a semitrailer, trailer, or any combination thereof, shall include the declared combined gross weight of all units when applying for registration with the department, except as exempted under subdivision (a) of Section 9400.1.

(b) This section does not apply to pickups nor to any commercial motor vehicle or combination that does not exceed 10,000 pounds gross vehicle weight.

(c) Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, having reason to believe that a motor vehicle, singly or in combination, is being operated in excess of its registered declared gross or combined gross vehicle weight, may require the driver to stop and submit to an inspection or

weighing of the vehicle or vehicles and an inspection of registration documents.

SEC. 8. Section 5014.1 of the Vehicle Code is amended to read:

5014.1. (a) Upon the implementation of the permanent trailer identification plate program, the following applies:

(1) All trailers, except in cases where the registrant has elected to apply for trailer identification plates pursuant to Section 5014 or the trailer is exempt from registration pursuant to Section 36100 or 36109, shall receive an identification certificate upon conversion to the permanent trailer identification program. The following trailers, except as provided in Section 5101, may be assigned a trailer identification plate by the department in accordance with this section or an election may be made to keep the current plate on the expiration date of registration:

(A) Logging dolly.

(B) Pole or pipe dolly.

(C) Semitrailer.

(D) Trailer.

(E) Trailer bus.

(2) An auxiliary dolly or tow dolly may be assigned a permanent trailer identification plate.

(3) Trailer coaches and park trailers, as described in subdivision (b) of Section 18010 of the Health and Safety Code, are exempted from the permanent trailer identification plate program.

(b) The permanent trailer identification plate shall be in a size and design as determined by the department.

(c) The permanent trailer identification plate shall not expire.

(d) Upon sale or transfer of the commercial trailer or semitrailer, the assigned permanent trailer identification plate remains with the trailer or semitrailer for the life of the vehicle except as provided in Section 5101. Upon transfer of ownership, a new identification certificate shall be issued.

(e) A service fee, sufficient to pay at least the entire actual costs to the department, not to exceed twenty dollars ($20) shall be assessed by the department upon assigning a permanent trailer identification plate.

(f) A fee of seven dollars ($7) for substitute permanent trailer identification plates or certificates shall be charged.

(g) All outstanding trailer and semitrailer license plates and registration indicia that were issued under this code on December 31, 2001, shall be considered valid.

(h) Every trailer which is submitted for original registration in this state will be issued a permanent trailer identification plate and identification certificate.

(i) A service fee of ten dollars ($10) shall be charged for each vehicle renewing its trailer plate or permanent trailer identification plate. These plates shall be renewed on the anniversary date of either the trailer plate expiration date or the date of issuance of the original permanent trailer identification plate, every five calendar years commencing in 2007.

SEC. 8.5. Section 5014.1 of the Vehicle Code is amended to read:

5014.1. (a) Upon the implementation of the permanent trailer identification plate program, the following applies:

(1) All trailers, except in cases where the registrant has elected to apply for trailer identification plates pursuant to Section 5014 or the trailer is exempt from registration pursuant to Section 36100 or 36109, shall receive an identification certificate upon conversion to the permanent trailer identification program. The following trailers, except as provided in Section 5101, may be assigned a trailer identification plate by the department in accordance with this section or an election may be made to keep the current plate on the expiration date of registration:

(A) Logging dolly.

(B) Pole or pipe dolly.

(C) Semitrailer.

(D) Trailer.

(E) Trailer bus.

(2) An auxiliary dolly or tow dolly may be assigned a permanent trailer identification plate.

(3) Trailer coaches and park trailers, as described in subdivision (b) of Section 18010 of the Health and Safety Code, are exempted from the permanent trailer identification plate program.

(b) The permanent trailer identification plate shall be in a size and design as determined by the department.

(c) The permanent trailer identification plate and the permanent trailer identification certificate shall not expire as long as the appropriate fees have been paid.

(d) Upon sale or transfer of the trailer or semitrailer, the assigned permanent trailer identification plate shall remain with the trailer or semitrailer for the life of the vehicle except as provided in Section 5101. Upon transfer of ownership, a new identification certificate shall be issued and the transferee shall pay a fee of seven dollars ($7).

(e) A service fee, sufficient to pay at least the entire actual costs to the department, not to exceed twenty dollars ($20) shall be assessed by the department upon converting to the permanent trailer identification program.

(f) A fee of seven dollars ($7) for substitute permanent trailer identification plates or certificates shall be charged.

(g) All valid trailer and semitrailer license plates and registration indicia that were issued under this code prior to December 31, 2001, upon which is affixed a permanent trailer identification sticker issued by the department, may be displayed in lieu of a permanent trailer identification plate as described in Sections 5011 and 5014.

(h) Every trailer that is submitted for original registration in this state shall be issued a permanent trailer identification plate and identification certificate.

(i) A service fee of ten dollars ($10) shall be charged for each vehicle renewing identification plates pursuant to this section. These plates shall be renewed on the anniversary date of either the trailer plate expiration date or the date of issuance of the original permanent trailer identification plate, every five calendar years commencing December 31, 2006.

SEC. 8.7. Section 5017 of the Vehicle Code is amended to read:

5017. (a) Each identification plate issued under Section 5016 shall bear a distinctive number to identify the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry for which it is issued. The owner, upon being issued a plate, shall attach it to the equipment, logging vehicle, or implement of husbandry for which it is issued and shall carry the identification certificate issued by the department as provided by Section 4454. It shall be unlawful for any person to attach or use the plate upon any other equipment, logging vehicle, trailer, semitrailer, or implement of husbandry. If the equipment, logging vehicle, or implement of husbandry is destroyed or the ownership thereof transferred to another person, the person to whom the plate was issued shall within 10 days notify the department, on a form approved by the department, that the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry has been destroyed or the ownership thereof transferred to another person.

(b) Upon the implementation of the permanent trailer identification plate program, all trailers except those exempted in paragraph 1 and (3) of subdivision (a) of Section 5014.1 may be assigned a single permanent plate for identification purposes. Upon issuance of the plate, it shall be attached to the vehicle pursuant to Sections 5200 and 5201.

(c) An identification certificate shall be issued for each trailer or semitrailer assigned an identification plate. The identification certificate shall contain upon its face, the date issued, the name and residence or business address of the registered owner or lessee and of the legal owner, if any, the vehicle identification number assigned to the trailer or semitrailer, and a description of the trailer or semitrailer as complete as that required in the application for registration of the trailer or semitrailer. When an identification certificate has been issued to a trailer

or semitrailer, the owner or operator shall make that certificate available for inspection by a peace officer upon request.

(d) The application for transfer of ownership of a vehicle with a trailer plate or permanent trailer identification plate shall be made within 10 days of sale of the vehicle. A service fee of seven dollars ($7) shall be charged according to subdivision (c) of Section 9261. The permanent trailer identification certificate is not a certificate of ownership as described in Section 38076.

SEC. 8.9. Section 5017 of the Vehicle Code is amended to read:

5017. (a) Each identification plate issued under Section 5016 shall bear a distinctive number to identify the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry for which it is issued. The owner, upon being issued a plate, shall attach it to the equipment, logging vehicle, or implement of husbandry for which it is issued and shall carry the identification certificate issued by the department as provided by Section 4454. It shall be unlawful for any person to attach or use the plate upon any other equipment, logging vehicle, trailer, semitrailer, or implement of husbandry. If the equipment, logging vehicle, or implement of husbandry is destroyed or the ownership thereof transferred to another person, the person to whom the plate was issued shall within 10 days notify the department, on a form approved by the department, that the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry has been destroyed or the ownership thereof transferred to another person.

(b) Upon the implementation of the permanent trailer identification plate program, all trailers except those exempted in paragraph (1) and (3) of subdivision (a) of Section 5014.1 may be assigned a single permanent plate for identification purposes. Upon issuance of the plate, it shall be attached to the vehicle pursuant to Sections 5200 and 5201.

(c) An identification certificate shall be issued for each trailer or semitrailer assigned an identification plate. The identification certificate shall contain upon its face, the date issued, the name and residence or business address of the registered owner or lessee and of the legal owner, if any, the vehicle identification number assigned to the trailer or semitrailer, and a description of the trailer or semitrailer as complete as that required in the application for registration of the trailer or semitrailer. For those trailers registered under Article 4 (commencing with Section 8050) of Chapter 4 on the effective date of the act adding this sentence that are being converted to the permanent trailer identification program, the identification card may contain only the name of the registrant, and the legal owner's name is not required to be shown. Upon transfer of those trailers, the identification card shall contain the name of the owner and legal owner, if any. When an identification certificate has been issued to a trailer or semitrailer, the

owner or operator shall make that certificate available for inspection by a peace officer upon request.

(d) The application for transfer of ownership of a vehicle with a trailer plate or permanent trailer identification plate shall be made within 10 days of sale of the vehicle. The permanent trailer identification certificate is not a certificate of ownership as described in Section 38076.

SEC. 9. Section 6700.2 of the Vehicle Code is amended to read:

6700.2. (a) Notwithstanding Section 4000.4, subdivision (a) of Section 6700, or Section 6702, a nonresident daily commuter may operate a motor vehicle on the highways of this state only if all of the following conditions are met:

(1) The motor vehicle is a passenger vehicle or a commercial vehicle of less than 8,001 pounds unladen weight with not more than two axles of the type commonly referred to as a pickup truck.

(2) The motor vehicle is used regularly to transport passengers on the highways of this state principally between, and to and from, the place of residence in a contiguous state and the place of employment in this state by the owner of the motor vehicle and for no other business purpose.

(3) The motor vehicle is not used in the course of a business within this state, including the transportation of property other than incidental personal property between, and to or from, the place of residence in a contiguous state and the place of employment of the motor vehicle owner in this state.

(4) Nothing in paragraphs (2) and (3) prohibits a nonresident daily commuter operating a motor vehicle that displays currently valid external vehicle identification indicia and who possess a corresponding identification card issued pursuant to Section 6700.25 from using that vehicle for other lawful purposes.

(b) The exception to registration of a motor vehicle under the conditions specified in this section does not supersede any other exception to registration under other conditions provided by law.

(c) This section does not apply to a resident of a foreign country.

SEC. 10. Section 9400.1 of the Vehicle Code is amended to read:

9400.1. (a) (1) In addition to any other registration fee, there shall be paid the fees set forth in this section for the registration of commercial motor vehicles operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more. Pickup truck and electric vehicle weight fees are not calculated under this section.

(2) The weight of a vehicle issued an identification plate pursuant to an application under Section 5014, and the weight of an implement of husbandry as defined in Section 36000, shall not be considered when calculating, pursuant to this section, the declared gross vehicle weight of a towing commercial motor vehicle that is owned and operated

exclusively by a farmer or an employee of a farmer in the conduct of agricultural operations.

(3) Tow trucks that are utilized to render assistance to the motoring public or to tow or carry impounded vehicles shall pay fees in accordance with this section, except that the fee calculation shall be based only on the gross vehicle weight rating of the towing or carrying vehicle. Upon each initial or transfer application for registration of a tow truck described in this paragraph, the registered owner or lessee or that owner's or lessee's designee, shall certify to the department the gross vehicle weight rating of the tow truck.

| Gross Vehicle Weight Range | Fee |
|---|---|
| 10,001–15,000 | $ 257 |
| 15,001–20,000 | 353 |
| 20,001–26,000 | 435 |
| 26,001–30,000 | 552 |
| 30,001–35,000 | 648 |
| 35,001–40,000 | 761 |
| 40,001–45,000 | 837 |
| 45,001–50,000 | 948 |
| 50,001–54,999 | 1,039 |
| 55,000–60,000 | 1,173 |
| 60,001–65,000 | 1,282 |
| 65,001–70,000 | 1,398 |
| 70,001–75,000 | 1,650 |
| 75,001–80,000 | 1,700 |

(b) The fee changes effected by this section apply to (1) initial or original registration on and after December 31, 2001, of any commercial motor vehicle operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more and (2) to renewal of registration of any commercial motor vehicle operated either singly or in combination, with a declared gross vehicle weight of 10,001 pounds or more for which registration expires on or after December 31, 2001.

SEC. 10.5. Section 9400.1 of the Vehicle Code is amended to read:

9400.1. (a) (1) In addition to any other registration fee, there shall be paid the fees set forth in this section for the registration of commercial motor vehicles operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more. Pickup truck and electric vehicle weight fees are not calculated under this section.

(2) The weight of a vehicle issued an identification plate pursuant to an application under Section 5014, and the weight of an implement of husbandry as defined in Section 36000, shall not be considered when

calculating, pursuant to this section, the declared gross vehicle weight of a towing commercial motor vehicle that is owned and operated exclusively by a farmer or an employee of a farmer in the conduct of agricultural operations.

(3) Tow trucks that are utilized to render assistance to the motoring public or to tow or carry impounded vehicles shall pay fees in accordance with this section, except that the fee calculation shall be based only on the gross vehicle weight rating of the towing or carrying vehicle. Upon each initial or transfer application for registration of a tow truck described in this paragraph, the registered owner or lessee or that owner's or lessee's designee, shall certify to the department the gross vehicle weight rating of the tow truck.

| Gross Vehicle Weight Range | Fee |
|---|---|
| 10,001–15,000 | $ 257 |
| 15,001–20,000 | 353 |
| 20,001–26,000 | 435 |
| 26,001–30,000 | 552 |
| 30,001–35,000 | 648 |
| 35,001–40,000 | 761 |
| 40,001–45,000 | 837 |
| 45,001–50,000 | 948 |
| 50,001–54,999 | 1,039 |
| 55,000–60,000 | 1,173 |
| 60,001–65,000 | 1,282 |
| 65,001–70,000 | 1,398 |
| 70,001–75,000 | 1,650 |
| 75,001–80,000 | 1,700 |

(b) The fee changes effected by this section apply to (1) initial or original registration on and after December 31, 2001, of any commercial motor vehicle operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more and (2) to renewal of registration of any commercial motor vehicle operated either singly or in combination, with a declared gross vehicle weight of 10,001 pounds or more for which registration expires on or after December 31, 2001.

(c) (1) In addition to the fees set forth in subdivision (a), a Cargo Theft Interdiction Program Fee of three dollars ($3) shall be paid at the time of initial or original registration or renewal of registration of each motor vehicle subject to weight fees under this section.

(2) This subdivision does not apply to vehicles used or maintained for the transportation of persons for hire, compensation or profit, pickup trucks, and tow trucks.

(3) For vehicles registered under Article 4 (commencing with Section 8050) of Chapter 4, the fee imposed under this subdivision shall be apportioned as required for registration fees under that article.

(4) Funds collected pursuant to the Cargo Theft Interdiction Program shall not be proportionately reduced for each month and shall be transferred to the Motor Carriers Safety Improvement Fund.

(d) Notwithstanding Section 42270 or any other provision of law, of the moneys collected by the department under this section, eighty-two dollars ($82) for each initial, original, and renewal registration shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Motor Vehicle Account in the State Transportation Fund. All other moneys collected by the department under this section shall be deposited to the credit of the State Highway Account in the State Transportation Fund. Eighty-two dollars ($82) of the fee imposed under this section shall not be proportionately reduced for each month. For vehicles registered under Article 4 (commencing with Section 8050) of Chapter 4, the fee shall be apportioned as required for registration under that article.

SEC. 11. Section 9410 of the Vehicle Code is amended to read:

9410. (a) One commercial vehicle weighing less than 8,001 pounds unladen, which displays the distinguishing license plate designated in, and is registered to a person who qualifies for the exemption provided by, Section 22511.5, or one commercial vehicle weighing less than 8,001 pounds unladen, which is not registered to a disabled person who qualifies for that exemption but which has been assigned and displays a distinguishing license plate and is used primarily for the transportation of the disabled person, is exempt from the weight fees provided for in Section 9400.

(b) A commercial vehicle displaying a distinguishing placard pursuant to Section 22511.5 is not exempt from weight fees.

SEC. 12. Section 9862.5 of the Vehicle Code is amended to read:

9862.5. In computing any penalty imposed under this chapter, a fraction of a dollar shall be disregarded unless it equals or exceeds fifty cents ($0.50), in which case it shall be treated as one dollar ($1).

SEC. 13. Section 12509 of the Vehicle Code is amended to read:

12509. (a) Except as otherwise provided in subdivision (f) of Section 12514, the department, for good cause, may issue an instruction permit to any physically and mentally qualified person who meets one of the following requirements and who applies to the department for an instruction permit:

(1) Is age 15 years and 6 months or over and has successfully completed approved courses in automobile driver education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(2) Is age 15 years and 6 months or over and has successfully completed an approved course in automobile driver education and is taking driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6.

(3) Is age 15 years or over and is enrolled in an approved driver education course and is at the same time or during the same semester enrolled in an approved driver training course.

(4) Is over the age of 17 years and 6 months.

(b) The applicant shall qualify for and be issued an instruction permit within 12 months from the date of the application.

(c) An instruction permit issued pursuant to subdivision (a) shall entitle the applicant to operate a vehicle, subject to the limitations imposed by this section and any other provisions of law, upon the highways for a period not exceeding 24 months from the date of the application.

(d) Any person, while having in his or her immediate possession a valid permit issued pursuant to subdivision (a), may operate a motor vehicle, other than a motorcycle or a motorized bicycle, when either taking the driver training instruction of a kind referred to in paragraph (3) of subdivision (a) of Section 12814.6, or when practicing that instruction, and when accompanied by, and under the immediate supervision of, a California licensed driver with a valid license of the appropriate class, 25 years of age or over whose driving privilege is not on probation. The age requirement of this subdivision does not apply if the licensed driver is the parent, spouse, or guardian of the permitholder or is a licensed or certified driving instructor. Except as provided in subdivision (e), an accompanying licensed driver at all times shall occupy a position within the driver's compartment that would enable the accompanying licensed driver to assist the person in controlling the vehicle as may be necessary to avoid a collision and to provide immediate guidance in the safe operation of the vehicle.

(e) Any person while having in his or her immediate possession a valid permit issued pursuant to subdivision (a), who is age 15 years and 6 months or over and who has successfully completed approved courses in automobile education and driver training as provided in paragraph (3) of subdivision (a) of Section 12814.6, and any person while having in his or her immediate possession a valid permit issued pursuant to subdivision (a) who is age 17 years and 6 months or over, may, in addition to operating a motor vehicle pursuant to subdivision (d), also operate a motorcycle or a motorized bicycle, except that the person shall not operate a motorcycle or a motorized bicycle during hours of darkness, shall stay off any freeways that have full control of access and no crossings at grade and shall not carry any passenger except an instructor licensed under Chapter 1 (commencing with Section 11100)

of Division 5 of this code or a qualified instructor as defined in Section 18252.2 of the Education Code.

(f) No student shall take driver training instruction unless he or she is at the same time taking driver education instruction or has successfully completed driver education.

(g) The department may also issue an instruction permit to a person who has been issued a valid driver's license to authorize the person to obtain driver training instruction and to practice that instruction in order to obtain another class of driver's license or an endorsement.

(h) The department may further restrict permits issued under subdivision (a) as it may determine to be appropriate to assure the safe operation of a motor vehicle by the permittee.

SEC. 14. Section 16020 of the Vehicle Code is amended to read:

16020. (a) Every driver and every owner of a motor vehicle shall at all times be able to establish financial responsibility pursuant to Section 16021, and shall at all times carry in the vehicle evidence of the form of financial responsibility in effect for the vehicle.

(b) ''Evidence of financial responsibility'' means any of the following:

(1) A form issued by an insurance company or charitable risk pool, as specified by the department pursuant to Section 4000.37.

(2) If the owner is a self-insurer, as provided in Section 16052 or a depositor, as provided in Section 16054.2, the certificate of self-insurance or the assignment of deposit letter issued by the department.

(3) An insurance covering note or binder pursuant to Section 382 or 382.5 of the Insurance Code.

(4) A showing that the vehicle is owned or leased by, or under the direction of, the United States or any public entity, as defined in Section 811.2 of the Government Code.

(c) For purposes of this section, ''evidence of financial responsibility'' also may be obtained by a law enforcement officer from an electronic reporting system when that system becomes available for use by law enforcement officers.

(d) For purposes of this section, ''evidence of financial responsibility'' also includes any of the following:

(1) The name of the insurance company and the number of an insurance policy or surety bond that was in effect at the time of the accident or at the time that evidence of financial responsibility is required to be provided pursuant to Section 16028, if that information is contained in the vehicle registration records of the department.

(2) The identifying motor carrier of property permit number issued by the Department of the California Highway Patrol to the motor carrier of property as defined in Section 34601, and displayed on the motor vehicle

in the manner specified by the Department of the California Highway Patrol.

(3) The identifying number issued to the household goods carrier, passenger stage carrier, or transportation charter party carrier by the Public Utilities Commission and displayed on the motor vehicle in the manner specified by the commission.

(4) The identifying number issued by the Interstate Commerce Commission or its successor federal agency, if proof of financial responsibility must be presented to the issuing agency as part of the identification number issuance process, and displayed on the motor vehicle in the manner specified by the issuing agency.

(e) Evidence of financial responsibility does not include any of the identification numbers in paragraph (1), (2), (3), or (4) of subdivision (d) if the carrier is currently suspended by the issuing agency for lack or lapse of insurance or other form of financial responsibility.

SEC. 15. Section 16028 of the Vehicle Code is amended to read:

16028. (a) Upon the demand of a peace officer pursuant to subdivision (b) or upon the demand of a peace officer or traffic collision investigator pursuant to subdivision (c), every person who drives a motor vehicle upon a highway shall provide evidence of financial responsibility for the vehicle that is in effect at the time the demand is made. However, a peace officer shall not stop a vehicle for the sole purpose of determining whether the vehicle is being driven in violation of this subdivision.

(b) Whenever a notice to appear is issued for any alleged violation of this code, except a violation specified in Chapter 9 (commencing with Section 22500) of Division 11 or any local ordinance adopted pursuant thereto, the cited driver shall furnish written evidence of financial responsibility upon request of the peace officer issuing the citation. The peace officer shall request and write the driver's evidence of financial responsibility on the notice to appear, except when the peace officer is unable to write the driver's evidence of financial responsibility on the notice to appear due to an emergency that requires his or her presence elsewhere. If the cited driver fails to provide evidence of financial responsibility at the time the notice to appear is issued, the peace officer may issue the driver a notice to appear for violation of subdivision (a). The notice to appear for violation of subdivision (a) shall be written on the same citation form as the original violation.

(c) Whenever a peace officer, or a regularly employed and salaried employee of a city or county who has been trained as a traffic collision investigator, is summoned to the scene of an accident described in Section 16000, the driver of any motor vehicle that is in any manner involved in the accident shall furnish written evidence of financial responsibility upon the request of the peace officer or traffic collision

investigator. If the driver fails to provide evidence of financial responsibility when requested, the peace officer may issue the driver a notice to appear for violation of this subdivision. A traffic collision investigator may cause a notice to appear to be issued for a violation of this subdivision, upon review of that citation by a peace officer.

(d) (1) If, at the time a notice to appear for a violation of subdivision (a) is issued, the person is driving a motor vehicle owned or leased by the driver's employer, and the vehicle is being driven with the permission of the employer, this section shall apply to the employer rather than the driver. In that case, a notice to appear shall be issued to the employer rather than the driver, and the driver may sign the notice on behalf of the employer.

(2) The driver shall notify the employer of the receipt of the notice issued pursuant to paragraph (1) not later than five days after receipt.

(e) A person issued a notice to appear for a violation of subdivision (a) may personally appear before the clerk of the court, as designated in the notice to appear, and provide written evidence of financial responsibility in a form consistent with Section 16020, showing that the driver was in compliance with that section at the time the notice to appear for violating subdivision (a) was issued. In lieu of the personal appearance, the person may submit by mail to the court written evidence of having had financial responsibility at the time the notice to appear was issued. Upon receipt by the clerk of that written evidence of financial responsibility in a form consistent with Section 16020, further proceedings on the notice to appear for the violation of subdivision (a) shall be dismissed.

SEC. 16. Section 20002 of the Vehicle Code is amended to read:

20002. (a) The driver of any vehicle involved in an accident resulting only in damage to any property, including vehicles, shall immediately stop the vehicle at the nearest location that will not impede traffic or otherwise jeopardize the safety of other motorists. Moving the vehicle in accordance with this subdivision does not affect the question of fault. The driver shall also immediately do either of the following:

(1) Locate and notify the owner or person in charge of that property of the name and address of the driver and owner of the vehicle involved and, upon locating the driver of any other vehicle involved or the owner or person in charge of any damaged property, upon being requested, present his or her driver's license, and vehicle registration, to the other driver, property owner, or person in charge of that property. The information presented shall include the current residence address of the driver and of the registered owner. If the registered owner of an involved vehicle is present at the scene, he or she shall also, upon request, present his or her driver's license information, if available, or other valid identification to the other involved parties.

(2) Leave in a conspicuous place on the vehicle or other property damaged a written notice giving the name and address of the driver and of the owner of the vehicle involved and a statement of the circumstances thereof and shall without unnecessary delay notify the police department of the city wherein the collision occurred or, if the collision occurred in unincorporated territory, the local headquarters of the Department of the California Highway Patrol.

(b) Any person who parks a vehicle which, prior to the vehicle again being driven, becomes a runaway vehicle and is involved in an accident resulting in damage to any property, attended or unattended, shall comply with the requirements of this section relating to notification and reporting and shall, upon conviction thereof, be liable to the penalties of this section for failure to comply with the requirements.

(c) Any person failing to comply with all the requirements of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 17. Section 24612 is added to the Vehicle Code, to read:

24612. (a) All trailers and semitrailers having an overall width of 80 inches or more and a gross vehicle weight rating of more than 10,000 pounds, and manufactured on or after December 1, 1993, except those designed exclusively for living or office use, and all truck tractors manufactured on or after July 1, 1997, shall be equipped with the conspicuity system specified in federal Motor Vehicle Safety Standard No. 108 (49 C.F.R. 571.108). The conspicuity system shall consist of either retroreflective sheeting or reflex reflectors, or a combination of retroreflective sheeting and reflex reflectors, as specified in the federal standard applicable on the date of manufacture of the vehicle.

(b) Any trailer, semitrailer, or motor truck having an overall width of 80 inches or more and manufactured prior to December 1, 1993, and any truck tractor manufactured prior to July 1, 1997, may be equipped with the conspicuity system described in subdivision (a).

SEC. 18. Section 34672 of the Vehicle Code is amended to read:

34672. If a motor carrier permit is paid for by a check that is dishonored by the bank, the permit shall be canceled. The department shall notify the carrier that the check was dishonored and that the permit will be canceled 30 days from the date of notification if the applicant does not make restitution. If the applicant does not make restitution for the dishonored check, and pay the dishonored check fee within 30 days of the notice, the application for a motor carrier permit shall be canceled.

SEC. 19. The Legislature finds and declares that a special law, as set forth in Section 5442.11 of the Business and Professions Code, as added by Section 2 of this act, is necessary and that a general law cannot be

made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances that exist in the Mid-City Recovery Redevelopment Project Area in the City of Los Angeles. The facts constituting the special circumstances are as follows:

The physical location of property in the Mid-City Recovery Redevelopment Project Area would benefit the Community Redevelopment Agency of the City of Los Angeles in its efforts to revitalize the affected area if the property may be used in the manner allowed by Section 2 of this act, with minimal disruption of the purposes served by Section 5440 of the Business and Professions Code.

SEC. 20. 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.

SEC. 21. Section 7.5 of this bill incorporates amendments to Section 4000.6 of the Vehicle Code proposed by both this bill and AB 1472. 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 4000.6 of the Vehicle Code, and (3) this bill is enacted after AB 1472, in which case Section 7.3 of this bill shall not become operative.

SEC. 22. Section 8.5 of this bill incorporates amendments to Section 5014.1 of the Vehicle Code proposed by both this bill and AB 1472. 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 5014.1 of the Vehicle Code, and (3) this bill is enacted after AB 1472, in which case Section 8 of this bill shall not become operative.

SEC. 23. Section 8.9 of this bill incorporates amendments to Section 5017 of the Vehicle Code proposed by both this bill and AB 1472. 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 5017 of the Vehicle Code, and (3) this bill is enacted after AB 1472, in which case Section 8.7 of this bill shall not become operative.

SEC. 24. Section 10.5 of this bill incorporates amendments to Section 9400.1 of the Vehicle Code proposed by both this bill and AB 1472. 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 9400.1 of the Vehicle Code, and (3) this bill is enacted after AB 1472, in which case Section 10 of this bill shall not become operative.

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## CHAPTER 826

An act to amend Sections 225, 6388.5, 10752, 10753.1, 10753.2, and 10753.9 of the Revenue and Taxation Code, and to amend Sections 4000.6, 4004, 4150.1, 4452, 4458, 5011, 5014.1, 5017, 5101, 5301, 5902, 9250.7, 9250.8, 9250.10, 9250.13, 9250.14, 9250.19, 9400, 9400.1, 9407, 9408, 9700, and 9706 of, to add Section 9400.3 to, and to repeal Section 666 of, the Vehicle Code, and to amend Section 59 of Chapter 861 of the Statutes of 2000, relating to vehicles.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Legislative findings and declarations:

(a) The Legislature finds and declares that it is necessary to convert California's system of commercial vehicle registration from an unladen weight system to a gross vehicle weight system and to initiate a permanent trailer identification program. Furthermore, it is the intent of the Legislature that this conversion be revenue neutral to all cities and counties and all unladen weight fee system recipients.

(b) For the purposes of this act, ''revenue neutrality'' requires that all recipients of the fees collected under the system in effect on December 31, 2001, shall receive the same level of funding, with the same degree of flexibility, after the conversion to the system created by this act.

SEC. 2. Section 225 of the Revenue and Taxation Code is amended to read:

225. (a) A trailer, semitrailer, logging dolly, pole or pipe dolly, or trailer bus, that has a valid identification plate issued to it pursuant to Section 5014.1 of the Vehicle Code, or any auxiliary dolly or tow dolly is exempt from personal property taxation.

(b) The exemption provided for in subdivision (a) does not apply to a logging dolly that is used exclusively off-highway.

SEC. 2.5. Section 6388.5 of the Revenue and Taxation Code is amended to read:

6388.5. Notwithstanding Section 6388, whenever a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more that has been manufactured or remanufactured outside this state is purchased for use without this state and is delivered by the manufacturer, remanufacturer, or dealer to the purchaser within this state, and the purchaser drives or moves the vehicle to any point outside this state within 30 days from and after the date of delivery, or whenever a new or remanufactured trailer or semitrailer with an unladen weight of 6,000 pounds or more that has been manufactured or remanufactured in this state is purchased for use without this state and is delivered by the manufacturer, remanufacturer, or dealer to the purchaser within this state, and the purchaser drives or moves the vehicle to any point outside this state within 75 days from and after the date of delivery, there are exempted from the taxes imposed by Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), and Part 1.6 (commencing with Section 7251) the gross receipts from the sale of and the storage, use, or other consumption of the vehicle within the state, if the purchaser or the purchaser's agent furnishes the following to the manufacturer, remanufacturer, or dealer:

(a) (1) Written evidence of an out-of-state license and registration for the vehicle.

(2) In cases where the vehicle is subject to the permanent trailer identification plate program under Section 5014.1 of the Vehicle Code and is used exclusively in interstate or foreign commerce, or both, written evidence of the purchaser's or lessee's United States Department of Transportation number or Single State Registration System filing may be substituted for the written evidence described in paragraph (1).

(b) The purchaser's affidavit attesting that he or she purchased the vehicle from a dealer at a specified location for use exclusively outside this state, or exclusively in interstate or foreign commerce, or both.

(c) The purchaser's affidavit that the vehicle has been moved or driven to a point outside this state within the appropriate period of either 30 days or 75 days of the date of the delivery of the vehicle to him or her.

SEC. 3. Section 10752 of the Revenue and Taxation Code, as amended by Section 6.8 of Chapter 861 of the statutes of 2000, is amended to read:

10752. The annual amount of the license fee for any vehicle, other than a trailer or semitrailer, as described in subdivision (a) of Section 5014.1 of the Vehicle Code, or a trailer coach that is required to be moved under permit as authorized in Section 35790 of the Vehicle Code, shall be a sum equal to 2 percent of the market value of the vehicle as determined by the department.

SEC. 4. Section 10753.1 of the Revenue and Taxation Code, as amended by Section 7 of Chapter 861 of the Statutes of 2000, is amended to read:

10753.1. (a) After determining the cost price to the purchaser, as provided in this article, the department shall classify or reclassify every vehicle in its proper class according to the classification plan set forth in this section.

(b) For the purpose of this part, a classification plan is established consisting of the following classes: a class from zero dollars ($0) to and including forty-nine dollars and ninety-nine cents ($49.99); a class from fifty dollars ($50) to and including one hundred ninety-nine dollars and ninety-nine cents ($199.99); and, thereafter, a series of classes successively set up in brackets having a spread of two hundred dollars ($200), consisting of that number of classes as will permit classification of all vehicles.

(c) The market value of a vehicle, other than a trailer or semitrailer, as described in subdivision (a) of Section 5014.1 of the Vehicle Code, for each registration year, starting with the year the vehicle was first sold to a consumer as a new vehicle, or the year the vehicle was first purchased or assembled by the person applying for original registration in this state, or the year the vehicle was sold to the current registered owner as a used vehicle, shall be as follows: for the first year, 85 percent of a sum equal to the middle point between the extremes of its class as established in subdivision (b); for the second year, 85 percent of that sum; for the third year, 70 percent of that sum; for the fourth year, 55 percent of that sum; for the fifth year, 40 percent of that sum; for the sixth year, 30 percent of that sum; for the seventh year, 25 percent of that sum; for the eighth year, 15 percent of that sum; for the ninth year, 10 percent of that sum; and for the 10th year and each succeeding year, 5 percent of that sum; provided, however, that the minimum tax shall be the sum of one dollar ($1). Notwithstanding this subdivision, the market value of a trailer coach first sold on and after January 1, 1966, which is required to be moved under permit as authorized in Section 35790 of the Vehicle Code, shall be determined by the schedule in Section 10753.3.

(d) This section shall become operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal of either of the following:

(1) The allocation of funds from the Vehicle License Fee Account or the Vehicle License Fee Growth Account of the Local Revenue Fund established during the 1991–92 Regular Session is in violation of Section 15 of Article XI of the California Constitution.

(2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982.

SEC. 5. Section 10753.2 of the Revenue and Taxation Code, as amended by Section 8 of Chapter 861 of the Statutes of 2000, is amended to read:

10753.2. (a) After determining the cost price to the purchaser, as provided in this article, the department shall classify or reclassify every vehicle, other than a trailer or semitrailer, as described in subdivision (a) of Section 5014.1 of the Vehicle Code, in its proper class according to the classification plan set forth in this section.

(b) For the purpose of this part, a classification plan is established consisting of the following classes: a class from zero dollars ($0) to and including forty-nine dollars and ninety-nine cents ($49.99); a class from fifty dollars ($50) to and including one hundred ninety-nine dollars and ninety-nine cents ($199.99); and thereafter a series of classes successively set up in brackets having a spread of two hundred dollars ($200), consisting of a number of classes that will permit classification of all vehicles.

(c) The market value of a vehicle, other than a trailer or semitrailer, as described in subdivision (a) of Section 5014.1 of the Vehicle Code, for each registration year, starting with the year the vehicle was first sold to a consumer as a new vehicle, or the year the vehicle was first purchased or assembled by the person applying for original registration in this state, or the year the vehicle was sold to the current registered owner as a used vehicle, shall be as follows: for the first year, 100 percent of a sum equal to the middle point between the extremes of its class as established in subdivision (b); for the second year, 90 percent of that sum; for the third year, 80 percent of that sum; for the fourth year, 70 percent of that sum; for the fifth year, 60 percent of that sum; for the sixth year, 50 percent of that sum; for the seventh year, 40 percent of that sum; for the eighth year, 30 percent of that sum; for the ninth year, 25 percent of that sum; and for the 10th year, 20 percent of that sum; and for the 11th year and each succeeding year, 15 percent of that sum; provided, however, that the minimum tax shall be the sum of one dollar ($1). Notwithstanding this subdivision, the market value of a trailer coach first sold on and after January 1, 1966, which is required to be moved under permit as authorized in Section 35790 of the Vehicle Code, shall be determined by the schedule in Section 10753.3.

(d) This section shall cease to be operative on the first day of the month following the month in which the Department of Motor Vehicles is notified by the Department of Finance of a final judicial determination by the California Supreme Court or any California court of appeal of either of the following:

(1) The allocation of funds from the Vehicle License Fee Account or the Vehicle License Fee Growth Account of the Local Revenue Fund established during the 1991–92 Regular Session is in violation of Section 15 of Article XI of the California Constitution.

(2) The state is obligated to reimburse counties for costs of providing medical services to medically indigent adults pursuant to Chapters 328 and 1594 of the Statutes of 1982.

SEC. 6. Section 10753.9 of the Revenue and Taxation Code, as amended by Section 9 of Chapter 861 of the Statutes of 2000, is amended to read:

10753.9. (a) After determining the cost price to the purchaser, as provided in this article, the department shall classify or reclassify every vehicle, other than a trailer or semitrailer, as described in subdivision (a) of Section 5014.1 of the Vehicle Code, in its proper class according to the classification plan set forth in this section.

(b) For the purpose of this part, a classification plan is established consisting of the following classes: a class from zero dollars ($0) to and including forty-nine dollars and ninety-nine cents ($49.99); a class from fifty dollars ($50) to and including one hundred ninety-nine dollars and ninety-nine cents ($199.99); and thereafter a series of classes successively set up in brackets having a spread of two hundred dollars ($200), consisting of that number of classes as will permit classification of all vehicles.

(c) The market value of a vehicle, other than a trailer or semitrailer, as described in subdivision (a) of Section 5014.1 of the Vehicle Code, for each registration year, starting with the year the vehicle was first sold to a consumer as a new vehicle, or the year the vehicle was first purchased or assembled by the person applying for original registration in this state, or the year ownership of a used vehicle was sold or transferred to the current registered owner, shall be as follows: for the first year, 85 percent of a sum equal to the middle point between the extremes of its class as established in subdivision (b); for the second year, 85 percent of that sum; for the third year, 70 percent of that sum; for the fourth year, 55 percent of that sum; for the fifth year, 40 percent of that sum; for the sixth year, 30 percent of that sum; for the seventh year, 25 percent of that sum; for the eighth year, 15 percent of that sum; for the ninth year, 10 percent of that sum; for the 10th year and each succeeding year, 5 percent of that sum; provided, however, that the minimum tax shall be the sum of one dollar ($1). Notwithstanding this subdivision, the market value of a trailer coach first sold on and after January 1, 1966, which is required to be moved under permit as authorized in Section 35790 of the Vehicle Code, shall be determined by the schedule in Section 10753.3.

(d) This section shall become operative and shall apply to both of the following:

(1) Initial or original registration of any vehicle never before registered in this state for which fees become due on July 15, 1991, and on or before July 31, 1991.

(2) Renewal of registration of any vehicle whose registration expires on or before July 31, 1991.

SEC. 7. Section 666 of the Vehicle Code is repealed.

SEC. 8. Section 4000.6 of the Vehicle Code is amended to read:

4000.6. Any commercial motor vehicle, singly or in combination, that operates with a declared gross vehicle or combined gross weight that exceeds 10,000 pounds shall be registered pursuant to Section 9400.1.

(a) A person submitting an application for registration of a commercial motor vehicle operated in combination with a semitrailer, trailer, or any combination thereof, shall include the declared combined gross weight of all units when applying for registration with the department.

(b) This section does not apply to pickups nor to any commercial motor vehicle or combination that does not exceed 10,000 pounds gross vehicle weight.

(c) Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, having reason to believe that a motor vehicle, singly or in combination, is being operated in excess of its registered declared gross or combined gross vehicle weight, may require the driver to stop and submit to an inspection or weighing of the vehicle or vehicles and an inspection of registration documents.

SEC. 8.5. Section 4000.6 of the Vehicle Code is amended to read:

4000.6. Any commercial motor vehicle, singly or in combination, that operates with a declared gross or combined gross vehicle weight that exceeds 10,000 pounds shall be registered pursuant to Section 9400.1.

(a) A person submitting an application for registration of a commercial motor vehicle operated in combination with a semitrailer, trailer, or any combination thereof, shall include the declared combined gross weight of all units when applying for registration with the department, except as exempted under subdivision (a) of Section 9400.1.

(b) This section does not apply to pickups nor to any commercial motor vehicle or combination that does not exceed 10,000 pounds gross vehicle weight.

(c) Any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, having reason to believe that a motor vehicle, singly or in combination, is being operated in excess of its registered declared gross or combined gross vehicle

weight, may require the driver to stop and submit to an inspection or weighing of the vehicle or vehicles and an inspection of registration documents.

SEC. 9. Section 4004 of the Vehicle Code, as amended by Section 18 of Chapter 861 of the Statutes of 2000, is amended to read:

4004. (a) (1) Commercial motor vehicles meeting the registration requirements of a foreign jurisdiction, and subject to registration but not entitled to exemption from registration or licensing under any of the provisions of this code or any agreements, arrangements, or declarations made under Article 3 (commencing with Section 8000) of Chapter 4, may, as an alternate to registration, secure a temporary registration to operate in this state for a period of not to exceed 90 days, or a trip permit to operate in this state for a period of four consecutive days.

(2) Each trip permit shall authorize the operation of a single commercial motor vehicle for a period of not more than four consecutive days, commencing with the day of first use and three consecutive days thereafter. Every permit shall identify, as the department may require, the commercial motor vehicle for which it is issued. Each trip permit shall be completed prior to operation of the commercial motor vehicle on any highway in this state and shall be carried in the commercial motor vehicle to which it applies and shall be readily available for inspection by a peace officer. Each permit shall be valid at the time of inspection by a peace officer only if it has been completed as required by the department and has been placed in the appropriate receptacle as required by this section. It is unlawful for any person to fail to comply with the provisions of this section.

(b) The privilege of securing and using a trip permit or a temporary registration not to exceed 90 days shall not extend to the following:

(1) Any vehicle which is based within this state and which is operated by a person having an established place of business within this state. For purposes of this paragraph, a commercial motor vehicle shall be considered to be based in this state if it is primarily operated or dispatched from or principally garaged or serviced or maintained at a site with an address within this state.

(2) Vehicles registered in any jurisdiction with which the State of California does not have vehicle licensing reciprocity, unless the Reciprocity Commission extends the privilege, by rule, after hearing.

(c) Any trailer or semitrailer identified in paragraph (1) of subdivision (a) of Section 5014.1 that enters the state without a currently valid license plate issued by California or another jurisdiction shall be immediately subject to full identification fees as specified in subdivision (e) of Section 5014.1.

SEC. 10. Section 4150.1 of the Vehicle Code, as amended by Section 19 of Chapter 861 of the Statutes of 2000, is amended to read:

4150.1. (a) On a form provided by the department, the registered owner of record, lessee, or the owner's designee shall certify and report the declared gross or combined gross vehicle weight of any commercial motor vehicle, singly or in combination, in excess of 10,000 pounds.

(b) A single form may be used or referenced for multiple vehicles.

SEC. 11. Section 4452 of the Vehicle Code is amended to read:

4452. The department may issue a certificate of ownership to the legal owner of a vehicle without requiring registration, and may issue a facsimile copy of the certificate to the owner if there is no legal owner, the application is submitted in proper form, and one of the following conditions exist:

(a) The vehicle is registered pursuant to Section 5014.1.

(b) A certification has been filed with the department, pursuant to subdivision (a) of Section 4604, that the vehicle has not been driven, moved, or left standing upon any highway so as to require payment of fees and that the owner will not thereafter permit that operation or movement of the vehicle or leave the vehicle standing on any highway without surrendering, or arranging to surrender, the certificate of ownership to the department and without first making an application for the regular registration of the vehicle and full payment of all fees required to be paid under this code and Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code.

SEC. 12. Section 4458 of the Vehicle Code, as amended by Section 20 of Chapter 861 of the Statute of 2000, is amended to read:

4458. If both license plates or a permanent trailer identification plate are lost or stolen, the registered owner shall immediately notify a law enforcement agency, and shall immediately apply to the department for new plates in lieu of the plates stolen or lost. The department shall in every proper case, except in the case of plates which are exempt from fees, cause to be issued applicable license plates of a different number and assign the registration number to the vehicle for which the plates are issued.

SEC. 13. Section 5011 of the Vehicle Code is amended to read:

5011. Every piece of special construction equipment, special mobile equipment, cemetery equipment, trailer, semitrailer, and every logging vehicle shall display an identification plate issued pursuant to Section 5014 or 5014.1.

SEC. 14. Section 5014.1 of the Vehicle Code is amended to read:

5014.1. (a) Upon the implementation of the permanent trailer identification plate program, the following applies:

(1) All trailers will receive an identification certificate upon conversion to the permanent trailer identification program. The following trailers, except as provided in Section 5101, may be assigned a trailer identification plate by the department in accordance with this

section or an election may be made to keep the current plate on the expiration date of registration:

(A) Logging dolly.

(B) Pole or pipe dolly.

(C) Semitrailer.

(D) Trailer.

(E) Trailer bus.

(2) An auxiliary dolly or tow dolly may be assigned a permanent trailer identification plate.

(3) Trailer coaches and park trailers, as described in subdivision (b) of Section 18010 of the Health and Safety Code, are exempted from the permanent trailer identification plate program.

(b) The permanent trailer identification plate shall be in a size and design as determined by the department.

(c) The permanent trailer identification plate and the permanent trailer identification certificate shall not expire as long as the appropriate fees have been paid.

(d) Upon sale or transfer of the trailer or semitrailer, the assigned permanent trailer identification plate shall remain with the trailer or semitrailer for the life of the vehicle except as provided in Section 5101. Upon transfer of ownership, a new identification certificate shall be issued and the transferee shall pay a fee of seven dollars ($7).

(e) A service fee, sufficient to pay at least the entire actual costs to the department, not to exceed twenty dollars ($20) shall be assessed by the department upon converting to the permanent trailer identification program.

(f) A fee of seven dollars ($7) for substitute permanent trailer identification plates or certificates shall be charged.

(g) All valid trailer and semitrailer license plates and registration indicia that were issued under this code prior to December 31, 2001, upon which is affixed a permanent trailer identification sticker issued by the department, may be displayed in lieu of a permanent trailer identification plate as described in Sections 5011 and 5014.

(h) Every trailer that is submitted for original registration in this state shall be issued a permanent trailer identification plate and identification certificate.

(i) A service fee of ten dollars ($10) shall be charged for each vehicle renewing identification plates pursuant to this section. These plates shall be renewed on the anniversary date of either the trailer plate expiration date or the date of issuance of the original permanent trailer identification plate, every five calendar years commencing December 31, 2006.

SEC. 14.5. Section 5014.1 of the Vehicle Code is amended to read:

5014.1. (a) Upon the implementation of the permanent trailer identification plate program, the following applies:

(1) All trailers, except in cases where the registrant has elected to apply for trailer identification plates pursuant to Section 5014 or the trailer is exempt from registration pursuant to Section 36100 or 36109, shall receive an identification certificate upon conversion to the permanent trailer identification program. The following trailers, except as provided in Section 5101, may be assigned a trailer identification plate by the department in accordance with this section or an election may be made to keep the current plate on the expiration date of registration:

(A) Logging dolly.

(B) Pole or pipe dolly.

(C) Semitrailer.

(D) Trailer.

(E) Trailer bus.

(2) An auxiliary dolly or tow dolly may be assigned a permanent trailer identification plate.

(3) Trailer coaches and park trailers, as described in subdivision (b) of Section 18010 of the Health and Safety Code, are exempted from the permanent trailer identification plate program.

(b) The permanent trailer identification plate shall be in a size and design as determined by the department.

(c) The permanent trailer identification plate and the permanent trailer identification certificate shall not expire as long as the appropriate fees have been paid.

(d) Upon sale or transfer of the trailer or semitrailer, the assigned permanent trailer identification plate shall remain with the trailer or semitrailer for the life of the vehicle except as provided in Section 5101. Upon transfer of ownership, a new identification certificate shall be issued and the transferee shall pay a fee of seven dollars ($7).

(e) A service fee, sufficient to pay at least the entire actual costs to the department, not to exceed twenty dollars ($20) shall be assessed by the department upon converting to the permanent trailer identification program.

(f) A fee of seven dollars ($7) for substitute permanent trailer identification plates or certificates shall be charged.

(g) All valid trailer and semitrailer license plates and registration indicia that were issued under this code prior to December 31, 2001, upon which is affixed a permanent trailer identification sticker issued by the department, may be displayed in lieu of a permanent trailer identification plate as described in Sections 5011 and 5014.

(h) Every trailer that is submitted for original registration in this state shall be issued a permanent trailer identification plate and identification certificate.

(i) A service fee of ten dollars ($10) shall be charged for each vehicle renewing identification plates pursuant to this section. These plates shall be renewed on the anniversary date of either the trailer plate expiration date or the date of issuance of the original permanent trailer identification plate, every five calendar years commencing December 31, 2006.

SEC. 15. Section 5017 of the Vehicle Code is amended to read:

5017. (a) Each identification plate issued under Section 5016 shall bear a distinctive number to identify the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry for which it is issued. The owner, upon being issued a plate, shall attach it to the equipment, logging vehicle, or implement of husbandry for which it is issued and shall carry the identification certificate issued by the department as provided by Section 4454. It shall be unlawful for any person to attach or use the plate upon any other equipment, logging vehicle, trailer, semitrailer, or implement of husbandry. If the equipment, logging vehicle, or implement of husbandry is destroyed or the ownership thereof transferred to another person, the person to whom the plate was issued shall within 10 days notify the department, on a form approved by the department, that the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry has been destroyed or the ownership thereof transferred to another person.

(b) Upon the implementation of the permanent trailer identification plate program, all trailers except those exempted in paragraph (3) of subdivision (a) of Section 5014.1 may be assigned a single permanent plate for identification purposes. Upon issuance of the plate, it shall be attached to the vehicle pursuant to Sections 5200 and 5201.

(c) An identification certificate shall be issued for each trailer or semitrailer assigned an identification plate. The identification certificate shall contain upon its face, the date issued, the name and residence or business address of the registered owner or lessee and of the legal owner, if any, the vehicle identification number assigned to the trailer or semitrailer, and a description of the trailer or semitrailer as complete as that required in the application for registration of the trailer or semitrailer. For those trailers registered under Article 4 (commencing with Section 8050) of Chapter 4 on the effective date of the act adding this sentence that are being converted to the permanent trailer identification program, the identification card may contain only the name of the registrant, and the legal owner's name is not required to be shown. Upon transfer of those trailers, the identification card shall contain the name of the owner and legal owner, if any. When an

identification certificate, has been issued to a trailer or semitrailer, the owner or operator shall make that certificate available for inspection by a peace officer upon request.

(d) The application for transfer of ownership of a vehicle with a trailer plate or permanent trailer identification plate shall be made within 10 days of sale of the vehicle. The permanent trailer identification certificate is not a certificate of ownership as described in Section 38076.

SEC. 15.5. Section 5017 of the Vehicle Code is amended to read:

5017. (a) Each identification plate issued under Section 5016 shall bear a distinctive number to identify the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry for which it is issued. The owner, upon being issued a plate, shall attach it to the equipment, logging vehicle, or implement of husbandry for which it is issued and shall carry the identification certificate issued by the department as provided by Section 4454. It shall be unlawful for any person to attach or use the plate upon any other equipment, logging vehicle, trailer, semitrailer, or implement of husbandry. If the equipment, logging vehicle, or implement of husbandry is destroyed or the ownership thereof transferred to another person, the person to whom the plate was issued shall within 10 days notify the department, on a form approved by the department, that the equipment, logging vehicle, trailer, semitrailer, or implement of husbandry has been destroyed or the ownership thereof transferred to another person.

(b) Upon the implementation of the permanent trailer identification plate program, all trailers except those exempted in paragraph (1) and (3) of subdivision (a) of Section 5014.1 may be assigned a single permanent plate for identification purposes. Upon issuance of the plate, it shall be attached to the vehicle pursuant to Sections 5200 and 5201.

(c) An identification certificate shall be issued for each trailer or semitrailer assigned an identification plate. The identification certificate shall contain upon its face, the date issued, the name and residence or business address of the registered owner or lessee and of the legal owner, if any, the vehicle identification number assigned to the trailer or semitrailer, and a description of the trailer or semitrailer as complete as that required in the application for registration of the trailer or semitrailer. For those trailers registered under Article 4 (commencing with Section 8050) of Chapter 4 on the effective date of the act adding this sentence that are being converted to the permanent trailer identification program, the identification card may contain only the name of the registrant, and the legal owner's name is not required to be shown. Upon transfer of those trailers, the identification card shall contain the name of the owner and legal owner, if any. When an identification certificate has been issued to a trailer or semitrailer, the

owner or operator shall make that certificate available for inspection by a peace officer upon request.

(d) The application for transfer of ownership of a vehicle with a trailer plate or permanent trailer identification plate shall be made within 10 days of sale of the vehicle. The permanent trailer identification certificate is not a certificate of ownership as described in Section 38076.

SEC. 16. Section 5101 of the Vehicle Code, as amended by Section 28.5 of Chapter 861 of the Statutes of 2000, is amended to read:

5101. Any person who is the registered owner or lessee of a passenger vehicle, commercial motor vehicle, motorcycle, trailer, or semitrailer registered or certificated with the department, or who makes application for an original registration or renewal registration of that vehicle, may, upon payment of the fee prescribed in Section 5106 and those fees required by Sections 5022 to 5024, inclusive, apply to the department for environmental license plates, in the manner prescribed in Section 5105, which plates shall be affixed to the passenger vehicle, commercial motor vehicle, motorcycle, trailer, or semitrailer for which registration is sought in lieu of the regular license plates.

SEC. 17. Section 5301 of the Vehicle Code, as amended by Section 33 of Chapter 861 of the Statutes of 2000, is amended to read:

5301. (a) Notwithstanding any other provision of this code and Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code, the registered owner or lessee of a fleet of vehicles consisting of commercial motor vehicles base plated in the state under Article 4 (commencing with Section 8050) of Chapter 4, or passenger automobiles may, upon payment of appropriate fees, apply to the department for license plates, permanent decals, and registration cards.

(b) Fleets shall consist of at least 50 motor vehicles to qualify for this program. However, the department may provide for permanent fleet registration through an association providing a combination of fleets of motor vehicles of 250 or more vehicles with no individual fleet of fewer than 25 motor vehicles. An association submitting an application of participation in the program shall provide within the overall application a listing identifying the registered owner of each fleet and the motor vehicles within each fleet. Identification of the motor vehicles as provided in this article applies to the ownership of the motor vehicles and not the association submitting the application.

(c) With the concurrence of both the department and the participant, the changes made in this section by the enactment of the Commercial Vehicle Registration Act of 2001 shall not affect those participants who were lawfully participating in the permanent fleet registration program on December 31, 2001. Any fleet that qualifies for permanent fleet registration as of December 31, 2001, will continue to count trailers to qualify as a fleet until January 1, 2007. However, five years following

the implementation of the permanent trailer identification program, all participants in the permanent fleet registration program shall meet the requirements of this section in order to continue enrollment in the program described in this section.

SEC. 18. Section 5902 of the Vehicle Code, as amended by Section 36 of Chapter 861 of the Statutes of 2000, is amended to read:

5902. Whenever any person has received as transferee a properly endorsed certificate of ownership, that person shall, within 10 days thereafter, forward the certificate with the proper transfer fee to the department and thereby make application for a transfer of registration. The certificate of ownership shall contain a space for the applicant's driver's license or identification card number, and the applicant shall furnish that number, if any, in the space provided.

SEC. 19. Section 9250.7 of the Vehicle Code, as amended by Section 41 of Chapter 861 of the Statutes of 2000, is amended to read:

9250.7. (a) (1) A service authority established under Section 22710 may impose a service fee of one dollar ($1) on all vehicles, except vehicles described in subdivision (a) of Section 5014.1, registered to an owner with an address in the county that established the service authority. The fee shall be paid to the department at the time of registration, or renewal of registration, or when renewal becomes delinquent, except on vehicles that are expressly exempted under this code from the payment of registration fees.

(2) In addition to the one dollar ($1) service fee, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles subject to Section 9400.1 registered to an owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars ($2).

(b) The department, after deducting its administrative costs, shall transmit, at least quarterly, the net amount collected pursuant to subdivision (a) to the Treasurer for deposit in the Abandoned Vehicle Trust Fund, which is hereby created. All money in the fund is continuously appropriated to the Controller for allocation to a service authority that has an approved abandoned vehicle abatement program pursuant to Section 22710, and for payment of the administrative costs of the Controller. After deduction of its administrative costs, the Controller shall allocate the money in the Abandoned Vehicle Trust Fund to each service authority in proportion to the revenues received from the fee imposed by that authority pursuant to subdivision (a). If any funds received by a service authority pursuant to this section are not expended to abate abandoned vehicles pursuant to an approved abandoned vehicle abatement program within 90 days of the close of the fiscal year in which the funds were received and the amount of those

funds exceeds the amount expended by the service authority for the abatement of abandoned vehicles in the previous fiscal year, a fee imposed pursuant to subdivision (a) shall be suspended for one year, commencing the following January 1.

(c) The fee imposed by a service authority shall remain in effect only for a period of 10 years from the date that the actual collection of the fee commenced.

SEC. 19.5. Section 9250.7 of the Vehicle Code, as amended by Section 41 of Chapter 861 of the Statutes of 2000, is amended to read:

9250.7. (a) (1) A service authority established under Section 22710 may impose a service fee of one dollar ($1) on all vehicles, except vehicles described in subdivision (a) of Section 5014.1, registered to an owner with an address in the county that established the service authority. The fee shall be paid to the department at the time of registration, or renewal of registration, or when renewal becomes delinquent, except on vehicles that are expressly exempted under this code from the payment of registration fees.

(2) In addition to the one dollar ($1) service fee, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles subject to Section 9400.1 registered to an owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars ($2).

(b) The department, after deducting its administrative costs, shall transmit, at least quarterly, the net amount collected pursuant to subdivision (a) to the Treasurer for deposit in the Abandoned Vehicle Trust Fund, which is hereby created. All money in the fund is continuously appropriated to the Controller for allocation to a service authority that has an approved abandoned vehicle abatement program pursuant to Section 22710, and for payment of the administrative costs of the Controller. After deduction of its administrative costs, the Controller shall allocate the money in the Abandoned Vehicle Trust Fund to each service authority in proportion to the revenues received from the fee imposed by that authority pursuant to subdivision (a). If any funds received by a service authority pursuant to this section are not expended to abate abandoned vehicles pursuant to an approved abandoned vehicle abatement program that has been in existence for at least two full fiscal years within 90 days of the close of the fiscal year in which the funds were received and the amount of those funds exceeds the amount expended by the service authority for the abatement of abandoned vehicles in the previous fiscal year, a fee imposed pursuant to subdivision (a) shall be suspended for one year, commencing on the July 1 following the Controller's determination pursuant to subdivision (e).

(c) Every service authority that imposes a fee authorized by subdivision (a) shall issue a fiscal yearend report to the Controller on or before October 31 of each year summarizing all of the following.

(1) The total revenues received by the service authority for the previous fiscal year.

(2) The total expenditures by the service authority for the previous fiscal year.

(3) The total number of vehicles abated during the previous fiscal year.

(4) The average cost per abatement during the previous fiscal year.

(5) Any additional, unexpended fee revenues for the service authority for the previous fiscal year.

(d) Each service authority that fails to submit the report required pursuant to subdivision (c) by November 30 of each year shall have the fee suspended for one year pursuant to subdivision (b).

(e) On or before January 1, 2003, and on or before January 1 annually thereafter, the Controller shall review the fiscal yearend reports submitted by each service authority pursuant to subdivision (c) to determine if fee revenues are being utilized in a manner consistent with the service authority's program. If the Controller determines that the use of the fee revenues is not consistent with the service authority's program, or that an excess of fee revenues exists, as specified in subdivision (b), the authority to collect the fee shall be suspended for one year pursuant to subdivision (b). If the Controller determines that a service authority has not submitted a fiscal yearend report as required in subdivision (c), the authorization to collect the service fee shall be suspended for one year pursuant to subdivision (d). The Controller shall inform the Department of Motor Vehicles on or before January 1, 2003, and on or before January 1 annually thereafter, that the authority to collect the fee is suspended. A suspension shall only occur if the service authority has been in existence for at least two full fiscal years and the revenue fee surpluses are in excess of those allowed under this section or the fiscal yearend report has not been submitted.

(f) On or before January 1, 2003, and on or before January 1 annually thereafter, the Controller shall prepare and submit to the Legislature a revenue and expenditure summary for each service authority established under Section 22710 that includes, but is not limited to, all of the following:

(1) The total revenues received by each service authority.

(2) The total expenditures by each service authority.

(3) The unexpended revenues for each service authority.

(4) The total number of vehicle abatements for each service authority.

(5) The average cost per abatement as provided by each service authority to the Controller pursuant to subdivision (c).

(g) The fee imposed by a service authority shall remain in effect only for a period of 10 years from the date that the actual collection of the fee commenced unless the fee is extended pursuant to this subdivision. The fee may be extended in increments of up to 10 years each if the board of supervisors of the county, by a two-thirds vote, and a majority of the cities having a majority of the incorporated population within the county adopt resolutions providing for the extension of the fee.

SEC. 20. Section 9250.8 of the Vehicle Code, as amended by Section 42 of Chapter 861 of the Statutes of 2000, is amended to read:

9250.8. (a) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar ($1) shall be paid at the time of registration or renewal of registration of every vehicle, except vehicles described in subdivision (a) of Section 5014.1, subject to registration under this code, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(b) In addition to the one dollar ($1) fee, upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles subject to Section 9400.1 shall pay an additional fee of two dollars ($2).

SEC. 21. Section 9250.10 of the Vehicle Code, as amended by Section 43 of Chapter 861 of the Statutes of 2000, is amended to read:

9250.10. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, any additional fees imposed by a service authority for freeway emergencies pursuant to Section 2555 of the Streets and Highways Code shall be paid to the department at the time of registration or renewal of registration of every vehicle, except vehicles described in subdivision (a) of Section 5014.1, subject to registration under this code in the subject counties, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(2) In addition to the additional fees imposed for freeway emergencies, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles subject to Section 9400.1 registered to an owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars ($2).

(b) After deducting its administrative costs, the department shall distribute the additional fees collected pursuant to subdivision (a) to the authority in the county in which they were collected.

SEC. 22. Section 9250.13 of the Vehicle Code, as amended by Section 44 of Chapter 861 of the Statutes of 2000, is amended to read:

9250.13. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, a fee of one dollar ($1) shall be paid at the time of registration or renewal of registration of every vehicle, except vehicles described in subdivision (a) of Section 5014.1, subject to registration under this code, except those vehicles that are expressly exempted under this code from the payment of registration fees.

(2) In addition to the one dollar ($1) fee, upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles subject to Section 9400.1 shall pay an additional fee of two dollars ($2).

(b) The money realized pursuant to this section shall be available, upon appropriation by the Legislature, for expenditure to offset the costs of increasing the uniformed field strength of the Department of the California Highway Patrol beyond its 1994 staffing level and those costs associated with maintaining this new level of uniformed field strength and carrying out those duties specified in subdivision (a) of Section 830.2 of the Penal Code.

SEC. 23. Section 9250.14 of the Vehicle Code, as amended by Section 5.5 of Chapter 1064 of the Statutes of 2000, is amended to read:

9250.14. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, upon the adoption of a resolution by any county board of supervisors, a fee of one dollar ($1) shall be paid at the time of registration or renewal of registration of every vehicle, except vehicles described in subdivision (a) of Section 5014.1, registered to an address within that county except those expressly exempted from payment of registration fees. The fees, after deduction of the administrative costs incurred by the department in carrying out this section, shall be paid quarterly to the Controller.

(2) In addition to the one dollar ($1) service fee, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles subject to Section 9400.1 registered to an owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars ($2).

(b) Notwithstanding Section 13340 of the Government Code, the money paid to the Controller is continuously appropriated, without regard to fiscal years, for the administrative costs of the Controller, and for disbursement by the Controller to each county that has adopted a resolution pursuant to subdivision (a), based upon the number of vehicles registered, or whose registration is renewed, to an address within that county.

(c) Except as otherwise provided in this subdivision, money allocated to a county pursuant to subdivision (b) shall be expended exclusively to

fund programs that enhance the capacity of local police and prosecutors to deter, investigate, and prosecute vehicle theft crimes. In any county with a population of 250,000 or less, the money shall be expended exclusively for those vehicle theft crime programs and for the prosecution of crimes involving driving while under the influence of alcohol or drugs, or both, in violation of Section 23152 or 23153, or vehicular manslaughter in violation of Section 191.5 or subdivision (c) of Section 192 of the Penal Code, or any combination of those crimes.

(d) No money collected pursuant to this section shall be expended to offset a reduction in any other source of funds, nor for any purpose not authorized under this section.

(e) Any funds received by a county prior to January 1, 2000, pursuant to this section that are not expended to deter, investigate, or prosecute crimes pursuant to subdivision (c) shall be returned to the Controller, for deposit in the Motor Vehicle Account in the State Transportation Fund. Those funds received by a county after January 1, 2000, shall be expended in accordance with this section.

(f) Each county that has adopted or adopts a resolution pursuant to subdivision (a) shall submit, on or before the 13th day following the end of each quarter, a quarterly expenditure and activity report to the designated statewide Vehicle Theft Investigation and Apprehension Coordinator in the Department of the California Highway Patrol. The coordinator shall compile all county reports and prepare an annual report for dissemination to the Legislature and participating counties.

(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 on or before January 1, 2005, deletes or extends that date.

SEC. 24. Section 9250.19 of the Vehicle Code, as amended by Section 46 of Chapter 861 of the Statutes of 2000, is amended to read:

9250.19. (a) (1) In addition to any other fees specified in this code and the Revenue and Taxation Code, upon the adoption of a resolution pursuant to this subdivision by any county board of supervisors, a fee of one dollar ($1) shall be paid at the time of registration, renewal, or supplemental application for apportioned registration pursuant to Article 4 (commencing with Section 8050) of Chapter 4 of every vehicle, except vehicles described in subdivision (a) of Section 5014.1, registered to an address within that county except those expressly exempted from payment of registration fees. The fees, after deduction of the administrative costs incurred by the department in carrying out this section, shall be paid quarterly to the Controller.

(2) In addition to the one dollar ($1) service fee, and upon the implementation of the permanent trailer identification plate program, and as part of the Commercial Vehicle Registration Act of 2001, all commercial motor vehicles subject to Section 9400.1 registered to an

owner with an address in the county that established a service authority under this section, shall pay an additional service fee of two dollars ($2).

(3) A resolution adopted pursuant to paragraph (1) shall include findings as to the purpose of, and the need for, imposing the additional registration fee, and shall identify the date after which the fee shall no longer be imposed.

(b) Notwithstanding Section 13340 of the Government Code, the money paid to the Controller pursuant to subdivision (a) is continuously appropriated, without regard to fiscal years, for disbursement by the Controller to each county that has adopted a resolution pursuant to subdivision (a), based upon the number of vehicles registered, or whose registration is renewed, to an address within that county, or supplemental application for apportioned registration, and, upon appropriation by the Legislature, for the administrative costs of the Controller incurred under this section.

(c) Money allocated to a county pursuant to subdivision (b) shall be expended exclusively to fund programs that enhance the capacity of local law enforcement to provide automated mobile and fixed location fingerprint identification of individuals who may be involved in driving under the influence of alcohol or drugs in violation of Section 23152 or 23153, or vehicular manslaughter in violation of Section 191.5 of the Penal Code or subdivision (c) of Section 192 of the Penal Code, or any combination of those and other vehicle-related crimes, and other crimes committed while operating a motor vehicle.

(d) The data from any program funded pursuant to subdivision (c) shall be made available by the local law enforcement agency to any local public agency that is required by law to obtain a criminal history background of persons as a condition of employment with that local public agency. A local law enforcement agency that provides the data may charge a fee to cover its actual costs in providing that data.

(e) (1) No money collected pursuant to this section shall be used to offset a reduction in any other source of funds for the purposes authorized under this section.

(2) Funds collected pursuant to this section, upon recommendation of local or regional Remote Access Network Boards to the Board of Supervisors, shall be used exclusively for the purchase, by competitive bidding procedures, and the operation of equipment which is compatible with the Department of Justice's Cal-ID master plan, as described in Section 11112.2 of the Penal Code, and the equipment shall interface in a manner that is in compliance with the requirement described in the Criminal Justice Information Services, Electronic Fingerprint Transmission Specification, prepared by the Federal Bureau of Investigation and dated August 24, 1995.

(f) The fee imposed under this section shall remain in effect only for a period of five years from the date that the actual collection of the fee commences, unless a later enacted statute deletes or extends that period.

SEC. 25. Section 9400 of the Vehicle Code is amended to read:

9400. Except as provided in Section 9400.1, and in addition to any other registration fee, there shall be paid the fees set forth in this section for the registration of any commercial motor vehicle that operates with unladen weight. Weight fees for pickup trucks are calculated under this section. Whenever a camper is temporarily attached to a motor vehicle designed to transport property, the motor vehicle shall be subject to the fees imposed by this section. The camper shall be deemed to be a load, and fees imposed by this section upon the motor vehicle shall be based upon the unladen weight of the motor vehicle, exclusive of the camper.

(a) For any electric vehicle designed, used, or maintained as described in this section, fees shall be paid according to the following schedule:

| Unladen Weight | Fee |
|---|---|
| Less than 6,000 lbs. | $ 87 |
| 6,000 lbs. or more but less than 10,000 lbs. | 266 |
| 10,000 lbs. or more | 358 |

(b) For any motor vehicle having not more than two axles and designed, used, or maintained as described in this section, other than an electric vehicle, fees shall be paid according to the following schedule:

| Unladen Weight | Fee |
|---|---|
| Less than 3,000 lbs. | $ 8 |
| 3,000 lbs. to and including 4,000 lbs. | 24 |
| 4,001 lbs. to and including 5,000 lbs. | 80 |
| 5,001 lbs. to and including 6,000 lbs. | 154 |
| 6,001 lbs. to and including 7,000 lbs. | 204 |
| 7,001 lbs. to and including 8,000 lbs. | 257 |
| 8,001 lbs. to and including 9,000 lbs. | 308 |
| 9,001 lbs. to and including 10,000 lbs. | 360 |

(c) For any motor vehicle having three or more axles designed, used, or maintained as described in this section, other than an electric vehicle, fees shall be paid according to the following schedule:

| Unladen Weight | Fee |
|---|---|
| 2,000 lbs. to and including 3,000 lbs. | $ 43 |
| 3,001 lbs. to and including 4,000 lbs. | 77 |

| | |
|---|---|
| 4,001 lbs. to and including 5,000 lbs. | 154 |
| 5,001 lbs. to and including 6,000 lbs. | 231 |
| 6,001 lbs. to and including 7,000 lbs. | 308 |
| 7,001 lbs. to and including 8,000 lbs. | 385 |
| 8,001 lbs. to and including 9,000 lbs. | 462 |
| 9,001 lbs. to and including 10,000 lbs. | 539 |

(d) This section is not applicable to any vehicle that is operated or moved over the highway exclusively for the purpose of historical exhibition or other similar noncommercial purpose.

(e) The fee changes effected by this section apply to (1) initial or original registration on or after January 1, 1995, and prior to December 31, 2001, of any commercial vehicle never before registered in this state and (2) to renewal of registration of any commercial vehicle whose registration expires on or after January 1, 1995, and prior to December 31, 2001.

(f) Commercial vehicles, other than those specified in Section 9400.1, with an initial registration or renewal of registration that is due on or after December 31, 2001, are subject to the payment of fees specified in this section.

SEC. 26. Section 9400.1 of the Vehicle Code is amended to read:

9400.1. (a) In addition to any other registration fee, there shall be paid the fees set forth in this section for the registration of commercial motor vehicles operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more. Pickup truck and electric vehicle weight fees are not calculated under this section.

| Commercial Vehicle Registration Act Range | Fee |
|---|---|
| 10,001 lbs. to and including 15,000 lbs. | $ 257 |
| 15,001 lbs. to and including 20,000 lbs. | 353 |
| 20,001 lbs. to and including 26,000 lbs. | 435 |
| 26,001 lbs. to and including 30,000 lbs. | 552 |
| 30,001 lbs. to and including 35,000 lbs. | 648 |
| 35,001 lbs. to and including 40,000 lbs. | 761 |
| 40,001 lbs. to and including 45,000 lbs. | 837 |
| 45,001 lbs. to and including 50,000 lbs. | 948 |
| 50,001 lbs. to and including 54,999 lbs. | 1,039 |
| 55,000 lbs. to and including 60,000 lbs. | 1,173 |
| 60,001 lbs. to and including 65,000 lbs. | 1,282 |
| 65,001 lbs. to and including 70,000 lbs. | 1,398 |

| | |
|---|---|
| 70,001 lbs. to and including 75,000 lbs. . . . . | 1,650 |
| 75,001 lbs. to and including 80,000 lbs. . . . . | 1,700 |

(b) The fee changes effected by this section apply to (1) initial or original registration on and after December 31, 2001, of any commercial motor vehicle operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more and (2) to renewal of registration of any commercial motor vehicle operated either singly or in combination, with a declared gross vehicle weight of 10,001 pounds or more for which registration expires on or after December 31, 2001.

(c) (1) In addition to the fees set forth in subdivision (a), a Cargo Theft Interdiction Program fee of three dollars ($3) shall be paid at the time of initial or original registration or renewal of registration of each motor vehicle subject to weight fees under this section.

(2) This subdivision does not apply to vehicles used or maintained for the transportation of persons for hire, compensation or profit, pickup trucks, and tow trucks.

(3) For vehicles registered under Article 4 (commencing with Section 8050) of Chapter 4, the fee imposed under this subdivision shall be apportioned as required for registration fees under that article.

(4) Funds collected pursuant to the Cargo Theft Interdiction Program shall not be proportionately reduced for each month and shall be transferred to the Motor Carriers Safety Improvement Fund.

(d) Notwithstanding Section 42270 or any other provision of law, of the moneys collected by the department under this section, eighty-two dollars ($82) for each initial, original, and renewal registration shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Motor Vehicle Account in the State Transportation Fund. All other moneys collected by the department under this section shall be deposited to the credit of the State Highway Account in the State Transportation Fund. Eighty-two dollars ($82) of the fee imposed under this section shall not be proportionately reduced for each month. For vehicles registered under Article 4 (commencing with Section 8050) of Chapter 4, the fee shall be apportioned as required for registration under that article.

SEC. 26.5. Section 9400.1 of the Vehicle Code is amended to read:

9400.1. (a) (1) In addition to any other registration fee, there shall be paid the fees set forth in this section for the registration of commercial motor vehicles operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more. Pickup truck and electric vehicle weight fees are not calculated under this section.

(2) The weight of a vehicle issued an identification plate pursuant to an application under Section 5014, and the weight of an implement of husbandry as defined in Section 36000, shall not be considered when

calculating, pursuant to this section, the declared gross vehicle weight of a towing commercial motor vehicle that is owned and operated exclusively by a farmer or an employee of a farmer in the conduct of agricultural operations.

(3) Tow trucks that are utilized to render assistance to the motoring public or to tow or carry impounded vehicles shall pay fees in accordance with this section, except that the fee calculation shall be based only on the gross vehicle weight rating of the towing or carrying vehicle. Upon each initial or transfer application for registration of a tow truck described in this paragraph, the registered owner or lessee or that owner's or lessee's designee, shall certify to the department the gross vehicle weight rating of the tow truck.

| Gross Vehicle Weight Range | Fee |
|---|---|
| 10,001–15,000 | $ 257 |
| 15,001–20,000 | 353 |
| 20,001–26,000 | 435 |
| 26,001–30,000 | 552 |
| 30,001–35,000 | 648 |
| 35,001–40,000 | 761 |
| 40,001–45,000 | 837 |
| 45,001–50,000 | 948 |
| 50,001–54,999 | 1,039 |
| 55,000–60,000 | 1,173 |
| 60,001–65,000 | 1,282 |
| 65,001–70,000 | 1,398 |
| 70,001–75,000 | 1,650 |
| 75,001–80,000 | 1,700 |

(b) The fee changes effected by this section apply to (1) initial or original registration on and after December 31, 2001, of any commercial motor vehicle operated either singly or in combination with a declared gross vehicle weight of 10,001 pounds or more and (2) to renewal of registration of any commercial motor vehicle operated either singly or in combination, with a declared gross vehicle weight of 10,001 pounds or more for which registration expires on or after December 31, 2001.

(c) (1) In addition to the fees set forth in subdivision (a), a Cargo Theft Interdiction Program Fee of three dollars ($3) shall be paid at the time of initial or original registration or renewal of registration of each motor vehicle subject to weight fees under this section.

(2) This subdivision does not apply to vehicles used or maintained for the transportation of persons for hire, compensation or profit, pickup trucks, and tow trucks.

(3) For vehicles registered under Article 4 (commencing with Section 8050) of Chapter 4, the fee imposed under this subdivision shall be apportioned as required for registration fees under that article.

(4) Funds collected pursuant to the Cargo Theft Interdiction Program shall not be proportionately reduced for each month and shall be transferred to the Motor Carriers Safety Improvement Fund.

(d) Notwithstanding Section 42270 or any other provision of law, of the moneys collected by the department under this section, eighty-two dollars ($82) for each initial, original, and renewal registration shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Motor Vehicle Account in the State Transportation Fund. All other moneys collected by the department under this section shall be deposited to the credit of the State Highway Account in the State Transportation Fund. Eighty-two dollars ($82) of the fee imposed under this section shall not be proportionately reduced for each month. For vehicles registered under Article 4 (commencing with Section 8050) of Chapter 4, the fee shall be apportioned as required for registration under that article.

SEC. 27. Section 9400.3 is added to the Vehicle Code, to read:

9400.3. (a) In order to ensure that Chapter 973 of the Statutes of 2000 is implemented as originally intended by the Legislature, the department may not asses the Cargo Theft Interdiction Program fee upon any commercial motor vehicle that has a declared gross vehicle weight of less than 10,001 pounds.

(b) The department shall issue refunds of, or credits for, any Cargo Theft Interdiction Program fee that is assessed upon a vehicle that does not meet the minimum weights described in Section 9400.1 or is a pickup truck or an electric vehicle.

SEC. 28. Section 9407 of the Vehicle Code is amended to read:

9407. The fee required under Section 9400 and 9400.1 shall be reduced proportionately for each month which has elapsed since the expiration of the last issued registration certificate if either of the following applies:

(a) Application for registration is made after the first month of any registration year and a certification was filed pursuant to subdivision (a) of Section 4604.

(b) Application for registration of a vehicle registered on a partial year basis is made after the first month following expiration and a certification was filed pursuant to subdivision (b) of Section 9706.

SEC. 29. Section 9408 of the Vehicle Code, as amended by Section 53 of Chapter 861 of the Statutes of 2000, is amended to read:

9408. (a) Whenever any registered commercial vehicle, including, but not limited to, any commercial vehicle operating in California with apportioned registration, for which fees have been paid under Section

9400 or 9400.1 is withdrawn from service in this state before the expiration of the registration, the owner may surrender the registration card and license plates previously issued for the vehicle to the department and, within 90 days of the time of withdrawal, make application for the registration of another commercial vehicle which is subject to the fees specified in Section 9400 or 9400.1. If the vehicle that is withdrawn from service is operating in this state under Article 4 (commencing with Section 8050 of Chapter 4, credit for any unused fees paid under Section 9400 or 9400.1 may be applied only to a commercial vehicle concurrently added to the same apportioned fleet.

(b) Under the circumstances described in subdivision (a), and upon a proper showing of the facts, the department upon determining the fees payable under this division shall allow as credit thereon the unexpired portion, as of the month of the application, of the fee paid under Section 9400 or 9400.1 for the previous registration, but, in addition to fees otherwise payable under this division less any credit, shall charge and collect an additional fee of two dollars ($2) for issuance of the new registration.

SEC. 30. Section 9700 of the Vehicle Code is amended to read:

9700. With respect to vehicles subject to additional registration fees under Section 9400 or 9400.1, a proportionate share of the additional fees may be paid for any partial period of one month or more, but less than 12 months, in an amount determined to be one-twelfth of the annual registration times the consecutive months, or fraction thereof, of the period of registration.

SEC. 31. Section 9706 of the Vehicle Code is amended to read:

9706. (a) Application for partial year registration in conjunction with an application for original California registration shall be made by the owner within 20 days of the date the vehicle first becomes subject to California registration. Any application for partial year registration submitted after that 20-day period shall be denied registration for a partial year, and the vehicle shall be subject to payment of the fees for the entire registration year. In addition to the fee for the registration year, a penalty, as specified in Section 9554, shall be added to the fee for registration.

(b) Any application to renew registration for a part of the remainder of the registration year or for the entire remainder of the registration year shall be made prior to midnight of the expiration date of the last issued registration certificate. Application shall be made upon presentation of the last issued registration card or of a potential registration issued by the department for use at the time of renewal and by payment of the required partial year fees, or, if renewal is for the remainder of the registration year, by payment of the annual fee required by Section 9400 or 9400.1, as reduced pursuant to Section 9407.

(c) Notwithstanding any other provision of law, an owner who registers a vehicle pursuant to this article during a calendar year shall, if the vehicle was not operated, moved, or left standing upon a highway, file a certificate of nonoperation prior to the date of the first operation of the vehicle on the highways in a manner which requires that registration and shall, by December 31 of each calendar year thereafter, file a certification pursuant to subdivisions (a) and (b) of Section 4604 when the vehicle is not registered for operation on the highways for the succeeding calendar year.

(d) Notwithstanding subdivision (c), the owner of any vehicle being moved or operated for the purpose of providing support to firefighting operations while the vehicle or owner is under contract to the United States Forestry Service, the United States Department of the Interior, the Bureau of Land Management, the Department of Forestry and Fire Protection, or the Office of Emergency Services may obtain partial year registration if application is made within 20 days of the date the vehicle is first operated, moved, or left standing on the highway and the owner has obtained a letter of authorization from the department prior to the date that the vehicle is first operated, moved, or left standing on the highway.

SEC. 32. Section 59 of Chapter 861 of the Statutes of 2000 is amended to read:

Sec. 59. On or before July 1, 2003, and annually thereafter, the Department of Motor Vehicles, in consultation with the Department of the California Highway Patrol, the Department of Transportation, the Board of Equalization, and the commercial vehicle industry, shall review and report to the Legislature its findings and, if applicable, make any recommendation as to the necessary adjustments in the fee schedule, to ensure that revenue neutrality is obtained and maintained for all affected entities and funds, and to ensure that the revised fee schedule affects the commercial vehicle industry in as equitable a manner as possible.

SEC. 33. Section 4 of this bill shall not become operative if SB 1182 is enacted and repeals Section 10753.1 of the Revenue and Taxation Code, as amended by Section 160 of Chapter 427 of the Statutes of 1992, and as amended by Section 7 of Chapter 861 of the Statutes of 2000.

SEC. 34. Section 6 of this bill shall not become operative if SB 1182 is enacted and repeals Section 10753.9 of the Revenue and Taxation Code, as added by Section 3 of Chapter 474 of the Statutes of 1991, and as amended by Section 9 of Chapter 861 of the Statutes of 2000.

SEC. 35. Section 8.5 of this bill shall become operative only if SB 290 is enacted on or before January 1, 2002, and amends Section 9400.1 of the Vehicle Code, in which case Section 8 of this bill shall not become operative.

SEC. 36. Section 14.5 of this bill incorporates amendments to Section 5014.1 of the Vehicle Code proposed by both this bill and SB 290. 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 5014.1 of the Vehicle Code, and (3) this bill is enacted after SB 290, in which case Section 14 of this bill shall not become operative.

SEC. 37. Section 15.5 of this bill shall become operative only if SB 290 is enacted on or before January 1, 2002, and amends Section 5014.1 of the Vehicle Code, in which case Section 15 of this bill shall not become operative.

SEC. 38. Section 19.5 of this bill incorporates amendments to Section 9250.7 of the Vehicle Code proposed by both this bill and SB 106. 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 9250.7 of the Vehicle Code, and (3) this bill is enacted after SB 106, in which case Section 19 of this bill shall not become operative.

SEC. 39. Section 26.5 of this bill incorporates amendments to Section 9400.1 of the Vehicle Code proposed by both this bill and SB 290. 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 9400.1 of the Vehicle Code, and (3) this bill is enacted after SB 290, in which case Section 26 of this bill shall not become operative.

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## CHAPTER 827

An act to add Article 7.5 (commencing with Section 4127) to Chapter 9 of Division 2 of the Business and Professions Code, relating to pharmacies, and making an appropriation therefor.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

I am signing Senate Bill 293 which would require the Board of Pharmacy (BOP) to adopt regulations establishing standards for compounding injectable sterile drug products in a pharmacy, require some pharmacies that compound these drug products to be specially licensed and provide for inspection and investigations of compounding pharmacies. The bill appropriates $580,000 from the Pharmacy Contingent Fund for this purpose.

The Board advises that due to the length of time necessary to promulgate regulations, this bill will not be implemented until the next budget year. As a consequence, I am deleting the funds and will review any funding and related positions as part of next year's budget process.

GRAY DAVIS, Governor

*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 increase the regulatory scrutiny of the compounding of sterile injectable drug products in pharmacies in order to improve public safety. The compounding of injectable sterile drug products in pharmacies benefits patients throughout California and is an essential health care service.

Effective July 1, 2002, the sum of five hundred eighty thousand dollars ($580,000) is hereby appropriated from the Pharmacy Board Contingent Fund to the California State Board of Pharmacy for the costs associated with the implementation of this act, including, but not limited to, the salaries and benefits of the employees required to implement this act.

SEC. 2. Article 7.5 (commencing with Section 4127) is added to Chapter 9 of Division 2 of the Business and Professions Code, to read:

Article 7.5. Injectable Sterile Drug Products

4127. The board shall adopt regulations establishing standards for compounding injectable sterile drug products in a pharmacy.

4127.1. (a) A pharmacy shall not compound injectable sterile drug products in this state unless the pharmacy has obtained a license from the board pursuant to this section. The license shall be renewed annually and is not transferable.

(b) A license to compound injectable sterile drug products may only be issued for a location that is licensed as a pharmacy. Furthermore, the license to compound injectable sterile drug products may only be issued to the owner of the pharmacy license at that location. A license to compound injectable sterile drug products may not be issued until the location is inspected by the board and found in compliance with this article and regulations adopted by the board.

(c) A license to compound injectable sterile drug products may not be renewed until the location has been inspected by the board and found to be in compliance with this article and regulations adopted by the board.

(d) Pharmacies operated by entities that are licensed by either the board or the State Department of Health Services and that have current accreditation from the Joint Commission on Accreditation of Healthcare Organizations, or other private accreditation agencies approved by the board, are exempt from the requirement to obtain a license pursuant to this section.

(e) The reconstitution of a sterile powder shall not require a license pursuant to this section if both of the following are met:

(1) The sterile powder was obtained from a manufacturer.

(2) The drug is reconstituted for administration to patients by a health care professional licensed to administer drugs by injection pursuant to this division.

(f) This section shall become effective on the earlier of July 1, 2003, or the effective date of regulations adopted by the board pursuant to Section 4127.

4127.2. (a) A nonresident pharmacy may not compound injectable sterile drug products for shipment into the State of California without a license issued by the board pursuant to this section. The license shall be renewed annually and shall not be transferable.

(b) A license to compound injectable sterile drug products may only be issued for a location that is licensed as a nonresident pharmacy. Furthermore, the license to compound injectable sterile drug products may only be issued to the owner of the nonresident pharmacy license at that location. A license to compound injectable sterile drug products may not be issued or renewed until the board receives the following from the nonresident pharmacy:

(1) A copy of an inspection report issued by the pharmacy's licensing agency, or a report from a private accrediting agency approved by the board, in the prior 12 months documenting the pharmacy's compliance with board regulations regarding the compounding of injectable sterile drug products.

(2) A copy of the nonresident pharmacy's proposed policies and procedures for sterile compounding.

(c) Nonresident pharmacies operated by entities that are licensed as a hospital, home health agency, or a skilled nursing facility and have current accreditation from the Joint Commission on Accreditation of Healthcare Organizations, or other private accreditation agencies approved by the board, are exempt from the requirement to obtain a license pursuant to this section.

(d) This section shall become effective on the earlier of July 1, 2003, or the effective date of regulations adopted by the board pursuant to Section 4127.

4127.3. (a) Whenever the board has a reasonable belief, based on information obtained during an inspection or investigation by the board, that a pharmacy compounding injectable sterile drug products poses an immediate threat to the public health or safety, the executive officer of the board may issue an order to the pharmacy to immediately cease and desist from compounding injectable sterile drug products. The cease and desist order shall remain in effect for no more than 30 days or the date of a hearing seeking an interim suspension order, whichever is earlier.

(b) Whenever the board issues a cease and desist order pursuant to subdivision (a), the board shall immediately issue the owner a notice

setting forth the acts or omissions with which the owner is charged, specifying the pertinent code section or sections.

(c) The order shall provide that the owner, within 15 days of receipt of the notice, may request a hearing before the president of the board to contest the cease and desist order. Consideration of the owner's contest of the cease and desist order shall comply with the requirements of Section 11425.10 of the Government Code. The hearing shall be held no later than five days from the date the request of the owner is received by the board. The president shall render a written decision within five days of the hearing. In the absence of the president of the board, the vice president of the board may conduct the hearing permitted by this subdivision. Review of the decision of the president of the board may be sought by the owner or person in possession or control of the pharmacy pursuant to Section 1094.5 of the Code of Civil Procedure.

(d) Failure to comply with a cease and desist order issued pursuant to this section shall be unprofessional conduct.

4127.4. Notwithstanding any other provision of law, a violation of this article, or regulations adopted pursuant thereto, may subject the person or entity that committed the violation to a fine of up to two thousand five hundred dollars ($2,500) per occurrence pursuant to a citation issued by the board.

4127.5. The fee for the issuance of a license, or renewal of a license, to compound sterile drug products shall be five hundred dollars ($500) and may be increased to six hundred dollars ($600).

4127.6. This article shall become operative upon the allocation of positions to the board for the implementation of the provisions of this article in the annual Budget Act.

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.

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## CHAPTER 828

An act to add Chapter 3.6 (commencing with Section 62765) to Part 3 of Division 21 of the Food and Agricultural Code, relating to dairies, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 12, 2001. Filed with
Secretary of State October 13, 2001.]

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

SECTION 1. Chapter 3.6 (commencing with Section 62765) is added to Part 3 of Division 21 of the Food and Agricultural Code, to read:

CHAPTER 3.6. DAIRY MARKETING STUDY

62765. The Department of Food and Agriculture, after consulting with its dairy advisory committee, shall complete a study of various proposals affecting regulated milk pricing and pooling programs by April 15, 2002. In particular, it shall study the following:

(a) The impact of the current federal forward price contract program on the regulated pricing and pooling programs operating in federal milk marketing orders and review other risk management tools available to dairy farmers and dairy processors.

(b) The impact of current forward price contract programs administered by California dairy farmer cooperatives on participating producers, on proprietary processors in procuring milk, and on affected products in the marketplace and the comparability of those programs with those operating within federal milk marketing orders.

(c) The impact of the various forward contract programs in use or proposed on pool revenue and price when those contracts are performed within the California milk pooling program.

(d) The impact of the various forward contract programs in use or proposed on pool revenue and price when those contracts are performed outside the California milk pooling program.

(e) The study may also include a review of the impact of requiring class 2 and 3 milk to be reported to the pool.

(f) A review of the advantages and disadvantages of a protein pricing payment system that is similar to the system used in federal milk marketing orders.

(g) This study shall be submitted to the respective chairpersons of the Senate Committee on Agriculture and Water Resources and the Assembly Committee on Agriculture.

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 evaluate the advantages and disadvantages of implementing cash forward contract programs at the earliest possible time, it is necessary for this act to take effect immediately.

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## CHAPTER 829

An act to amend Sections 60602 and 60614 of, and to add Section 60167 to, the Water Code, relating to water.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 60167 is added to the Water Code, to read:

60167. (a) In addition to the prohibitions set forth in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code), a board member of a district may not make, or in any way attempt to use his or her official position to influence, a decision in which the board member knows, or has reason to know that any of the board member's relatives or cohabitants, whose interests are not otherwise regulated by that act, has a financial interest.

(b) As used in this section, the following terms have the following meanings:

(1) ''Relative'' means any person related to the board member by blood or adoption, including all relatives whose status is preceded by the words ''step,'' ''great,'' or ''grand,'' or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

(2) ''Cohabitant'' means any person who regularly resides in the board member's household or who uses the board member's residence address to receive mail.

SEC. 2. Section 60602 of the Water Code is amended to read:

60602. (a) Before making any contract totaling twenty-five thousand dollars ($25,000) or more within any 12-month period, the district shall advertise for bids.

(b) Notwithstanding subdivision (a), if a proposed expenditure described in the annual district budget for any item of supplies or services equals or exceeds twenty-five thousand dollars ($25,000), the district shall advertise for bids before making any contract for that item during the year to which that budget applies.

(c) This section does not apply to any of the following contracts:

(1) The recruitment, hiring, and dismissal of district employees and officers.

(2) Contracts with other public entities pursuant to subdivision (i) of Section 60230.

(3) Contracts for which only per diem and travel expenses are paid and there is no payment for services rendered.

(4) Contracts solely for the purpose of retaining expert witnesses for litigation.

(5) Contracts for proprietary information or systems.

(6) Contracts for professional services, including, but not limited to, architectural, engineering, environmental, land surveying, or construction project management services, that are let on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(7) Contracts for legal services that are let on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services.

(d) The district may adopt other procurement, advertising, and bidding rules that are more restrictive than those contained in the Public Contract Code and those more restrictive rules shall govern the procurement, advertising, and bidding practices of the district.

SEC. 3. Section 60614 of the Water Code is amended to read:

60614. In case of an emergency relating to the repair or replacement of district facilities, if notice for bids to let contracts will not be given, the district shall comply with Chapter 2.5 (commencing with Section 22050) of the Public Contract Code.

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

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## CHAPTER 830

An act to amend Section 40513 of the Vehicle Code, and to amend Sections 202, 241.1, 257, 727.3, and 828 of, and to add Sections 727.32 and 827.9 to, the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 40513 of the Vehicle Code is amended to read:

40513. (a) Whenever written notice to appear has been prepared, delivered, and filed with the court, an exact and legible duplicate copy of the notice when filed with the magistrate, in lieu of a verified complaint, shall constitute a complaint to which the defendant may plead ''guilty'' or ''nolo contendere.''

If, however, the defendant violates his or her promise to appear in court or does not deposit lawful bail, or pleads other than ''guilty'' or ''nolo contendere'' to the offense charged, a complaint shall be filed that shall conform to Chapter 2 (commencing with Section 948) of Title 5 of Part 2 of the Penal Code, which shall be deemed to be an original complaint, and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by him or her and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear.

(b) Notwithstanding subdivision (a), whenever the written notice to appear has been prepared on a form approved by the Judicial Council, an exact and legible duplicate copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea and, if the notice to appear is verified, upon which a warrant may be issued. If the notice to appear is not verified, the defendant may, at the time of arraignment, request that a verified complaint be filed. In the case of an infraction violation in which the defendant is a minor, the defendant may enter a plea at the arraignment upon a written notice to appear. Notwithstanding any other provision of law, in the case of an infraction violation, no consent of the minor is required prior to conducting the hearing upon a written notice to appear.

SEC. 2. Section 202 of the Welfare and Institutions Code is amended to read:

202. (a) The purpose of this chapter is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. When removal of a minor is determined by the juvenile court to be necessary, reunification of the minor with his or her family shall be a primary objective. When the minor is removed from his or her own family, it is the purpose of this chapter to secure for the minor custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents. This chapter shall be liberally construed to carry out these purposes.

(b) Minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment and guidance consistent with their best interest and the best interest of the public. Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. If a minor has been removed from the custody of his or her parents, family preservation and family reunification are appropriate goals for the juvenile court to consider when determining the disposition of a minor under the jurisdiction of the juvenile court as a consequence of delinquent conduct when those goals are consistent with his or her best interests and the best interests of the public. When the minor is no longer a ward of the juvenile court, the guidance he or she received should enable him or her to be a law-abiding and productive member of his or her family and the community.

(c) It is also the purpose of this chapter to reaffirm that the duty of a parent to support and maintain a minor child continues, subject to the financial ability of the parent to pay, during any period in which the minor may be declared a ward of the court and removed from the custody of the parent.

(d) Juvenile courts and other public agencies charged with enforcing, interpreting, and administering the juvenile court law shall consider the safety and protection of the public, the importance of redressing injuries to victims, and the best interests of the minor in all deliberations pursuant to this chapter. Participants in the juvenile justice system shall hold themselves accountable for its results. They shall act in conformity with a comprehensive set of objectives established to improve system performance in a vigorous and ongoing manner. In working to improve system performance, the presiding judge of the juvenile court and other juvenile court judges designated by the presiding judge of the juvenile court shall take into consideration the recommendations contained in subdivision (e) of Standard 24 of the Standards of Judicial Administration, contained in Division I of the Appendix to the California Rules of Court.

(e) As used in this chapter, ''punishment'' means the imposition of sanctions. It shall not include a court order to place a child in foster care as defined by Section 727.3. Permissible sanctions may include the following:

(1) Payment of a fine by the minor.

(2) Rendering of compulsory service without compensation performed for the benefit of the community by the minor.

(3) Limitations on the minor's liberty imposed as a condition of probation or parole.

(4) Commitment of the minor to a local detention or treatment facility, such as a juvenile hall, camp, or ranch.

(5) Commitment of the minor to the Department of the Youth Authority.

''Punishment,'' for the purposes of this chapter, does not include retribution.

(f) In addition to the actions authorized by subdivision (e), the juvenile court may, as appropriate, direct the offender to complete a victim impact class, participate in victim offender conferencing subject to the victim's consent, pay restitution to the victim or victims, and make a contribution to the victim restitution fund after all victim restitution orders and fines have been satisfied, in order to hold the offender accountable or restore the victim or community.

SEC. 3. Section 241.1 of the Welfare and Institutions Code is amended to read:

241.1. (a) Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child protective services department shall, pursuant to a jointly developed written protocol described in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. Any other juvenile court having jurisdiction over the minor shall receive notice from the court, within five calendar days, of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(b) The probation department and the child protective services department in each county shall jointly develop a written protocol to ensure appropriate local coordination in the assessment of a minor described in subdivision (a), and the development of recommendations by these departments for consideration by the juvenile court. These protocols shall require, which requirements shall not be limited to, consideration of the nature of the referral, the age of the minor, the prior record of the minor's parents for child abuse, the prior record of the minor for out-of-control or delinquent behavior, the parents' cooperation with the minor's school, the minor's functioning at school, the nature of the minor's home environment, and the records of other agencies which have been involved with the minor and his or her family. The protocols also shall contain provisions for resolution of disagreements between the probation and child protective services departments regarding the need

for dependency or ward status and provisions for determining the circumstances under which a new petition should be filed to change the minor's status.

(c) Whenever a minor who is under the jurisdiction of the juvenile court of a county pursuant to Section 300, 601, or 602 is alleged to come within the description of Section 300, 601, or 602 by another county, the county probation department or child protective services department in the county that has jurisdiction under Section 300, 601, or 602 and the county probation department or child protective services department of the county alleging the minor to be within one of those sections shall initially determine which status will best serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court in which the petition is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. In making their recommendation to the juvenile court, the departments shall conduct an assessment consistent with the requirements of subdivision (b). Any other juvenile court having jurisdiction over the minor shall receive notice from the court in which the petition is filed within five calendar days of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(d) Nothing in this section shall be construed to authorize the filing of a petition or petitions, or the entry of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court.

SEC. 4. Section 257 of the Welfare and Institutions Code is amended to read:

257. (a) (1) Except in the case of infraction violations, with the consent of the minor, a hearing before a juvenile hearing officer, or a hearing before a referee or a judge of the juvenile court, where the minor is charged with an offense as specified in this section, may be conducted upon an exact legible copy of a written notice given pursuant to Article 2 (commencing with Section 40500) of Chapter 2 of Division 17 or Section 41103 of the Vehicle Code, or an exact legible copy of a written notice given pursuant to Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code when the offense charged is a violation listed in Section 256, or an exact legible copy of a citation as set forth in subdivision (e) of Section 660.5, in lieu of a petition as provided in Article 16 (commencing with Section 650).

(2) Notwithstanding any other provision of law, in the case of infraction violations, consent of the minor is not required prior to conducting a hearing upon written notice to appear.

(b) Prior to the hearing, the judge, referee, or juvenile hearing officer may request the probation officer to commence a proceeding, as provided in Article 16 (commencing with Section 650), in lieu of a hearing in Informal Juvenile and Traffic Court.

SEC. 5. Section 727.3 of the Welfare and Institutions Code is amended to read:

727.3. The purpose of this section is to provide a means to monitor the care of every child in foster care who has been declared a ward of the juvenile court pursuant to Section 601 or 602 to ensure that everything reasonably possible is done to facilitate the safe early return of the child to his or her own home or to establish a permanent plan for the child.

(a) Whenever the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the juvenile court shall order the probation department to ensure the provision of services 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.

(b) A child shall be deemed to have entered foster care, for purposes of this section, on the date that is 60 days after the date on which the minor was removed from his or her home.

(c) The status of every child declared a ward and placed in foster care shall be reviewed at the time of the initial placement order and then as determined by the court but no less frequently than once every six months, as calculated from the date the minor entered foster care. If the court so elects, the court may declare the hearing at which the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727 as the first status review hearing. At each status review hearing, the court shall consider the safety of the child and make findings and orders which determine the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the child to the child's home or to complete whatever steps are necessary to finalize the permanent placement of the child.

(3) The extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care.

(4) The likely date by which the child may be returned to and safely maintained in the home or placed for legal guardianship or adoption.

(d) The status review hearings required by subdivision (c) may be heard by an administrative review panel, provided:

(1) The administrative review shall be open to participation by the child and parents or legal guardians and all those persons entitled to notice under Section 727.4.

(2) The child and his or her parents or legal guardians receive proper notice as required in Section 727.4.

(3) The administrative review panel is composed of persons appointed by the presiding judge of the juvenile court, the membership of which shall include at least one person who is not responsible for the case management of, or delivery of services to, the child or the parents who are the subject of the review.

(4) The findings of the administrative review panel shall be submitted to the juvenile court for the court's approval and shall become part of the official court record.

(e) At the status review hearing the court shall order return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The probation department shall have the burden of establishing that detriment. The failure of the child to participate in court-ordered treatment programs shall be prima facie evidence that the return of the child would be detrimental. In making its determination, the court shall review and consider the social study report and recommendations pursuant to Section 706.5 and the report and recommendations of any child advocate appointed for the child in the case, and shall consider the efforts or progress, or both, demonstrated by the child and family and the extent to which the child availed himself or herself of the services provided.

(f) There shall be a permanency planning hearing within 12 months of the date the child entered foster care and periodically thereafter, but no less frequently than every 12 months during the period of placement. It shall be the duty of the probation officer to prepare a written social study report pursuant to Section 706.5 containing a statement of the responsibilities of the parents or legal guardians, the probation department, the caseworker of the probation department, the foster parents, and the child. The written social study shall also describe the goals for the child's placement and care with the department, including the services provided to achieve the goal that the child shall exhibit lawful and productive behavior, and the appropriate plan for permanence for the child. The report shall be submitted to the court at the permanency planning hearing.

(1) At all permanency planning hearings, the court shall determine the permanent plan for the child that includes a determination of whether the child will be returned to the physical custody of the parent or legal

guardian. Upon findings that there is substantial probability that additional services will aid the safe return of the child to the physical custody of his or her parents or legal guardian within six months, the court may order further reunification services to be provided to the child and parent or legal guardian for a period not to exceed six months. For purposes of this section, in order to find a substantial probability, the court shall be required to find the child and his or her parents or guardians to have demonstrated the capacity and ability to complete the objectives of his or her case plan. If the child is not returned to a parent or legal guardian at the permanency hearing, the court shall determine whether or not the child should be referred for adoption proceedings, referred for legal guardianship pursuant to subdivision (c) of Section 728, or referred to an alternative planned permanent living arrangement, including whether, because of the child's special needs or circumstances, the child should be continued in foster care on a permanent basis. The court shall also determine the extent of progress in achieving the treatment goals of the plan. In the case of a child who has reached 16 years of age, the hearing shall, in addition, determine the services needed to assist the child to make the transition from foster care to independent living.

(2) An ''alternative planned permanent living arrangement'' means a permanent foster care placement with a specific identified foster family on a permanent basis, a facility described in Section 11402, or an independent living arrangement, such as emancipation by marriage, court order, or reaching the age of majority.

(3) When a minor is placed in long-term foster care with a relative, the court may authorize the relative to provide the same legal consent for the minor's medical, surgical, and dental care, and education as the custodial parent of the minor.

(4) If the child has a continuing involvement with his or her parents or legal guardians, the parents or legal guardians shall be involved in the planning for a permanent placement. The court order placing the child in a permanent placement shall include a specification of the nature and frequency of visiting arrangements with the parents or legal guardians.

(5) Any change in the placement of a child in permanent foster care or the responsibilities of the foster parents for that child shall be made only by order of the court that ordered the placement pursuant to a petition filed pursuant to Section 778.

(g) Prior to any status or permanency hearing involving a child in the physical custody of a community care facility or foster family agency, the facility or agency shall file with the court a report containing its recommendations. Prior to any status or permanency hearing involving the physical custody of a foster parent, relative caregiver, preadoptive parent, or legal guardian, that person may present to the court a report

containing his or her recommendations. The court shall consider all reports and recommendations, filed pursuant to this subdivision.

(h) If the minor is not returned to the custody of a parent or legal guardian at the permanency hearing, the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the minor was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or guardian.

The court shall inform the parent or legal guardian that if the minor cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 727.31 may be instituted. The court shall not order that a hearing pursuant to Section 727.31 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or legal guardian.

(2) Order that the minor remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 727.31 is not in the best interest of the minor because the minor is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or by a licensed county adoption agency that adoption is not in the best interest of the minor shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the minor and shall not preclude a different recommendation at a later date if the minor's circumstances change.

(3) Order that the hearing be held within 120 days, pursuant to Section 727.31, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

(i) Notwithstanding subdivision (h), the court shall not order a hearing pursuant to Section 727.31 if the probation department has documented a compelling reason for determining that the termination of parental rights would not be in the minor's best interests. A compelling reason is either of the following:

(1) A determination made by the probation officer that any of the following applies:

(A) The parent or legal guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship.

(B) The permanent plan is for the minor to return to his or her own home.

(C) A child 12 years of age or older objects to termination of parental rights.

(D) The minor is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the minor a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(2) A determination by 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 that the minor is unlikely to be adopted and the child is living with a relative who is unable or unwilling to adopt the child because exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the minor but who is willing and capable of providing the minor with a stable and permanent home environment, and the removal of the minor from the physical custody of his or her relative or foster parent would be detrimental to the minor's emotional well-being.

(j) Whenever the court orders that a hearing pursuant to Section 727.31 shall be held, it shall direct the agency supervising the minor and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include all of the following:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount and nature of any contact between the minor 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 minor shall be reviewed on a case-by-case basis, ''extended family'' for the purpose of the paragraph shall include, but not be limited to, the minor's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial

rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation of seeking adoption or guardianship, and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

(7) Whenever a court orders a hearing pursuant to Section 727.31, it shall order that 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 or the licensed county adoption agency has exclusive responsibility for determining the adoptive placement and making all adoption-related decisions.

(k) Nothing in this section shall be construed to limit the ability of a parent to voluntarily relinquish his or her child to 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 or to a licensed county adoption agency at any time while the minor is a ward of the juvenile court if the department agency is willing to accept the relinquishment.

SEC. 6. Section 727.32 is added to the Welfare and Institutions Code, to read:

727.32. (a) In any case where a child has been declared a ward of the juvenile court and has been in foster care for 15 of the most recent 22 months, the probation department shall follow the procedures described in Section 727.31 to terminate the parental rights of the child's parents, unless either:

(1) The probation department has documented in the probation department file a compelling reason for determining that termination of parental rights would not be in the child's best interests.

(2) The probation department has not provided the family with reasonable efforts necessary to achieve reunification.

(b) If the probation department has documented a compelling reason for not terminating parental rights at the time of the permanency planning hearing pursuant to subdivision (i) of Section 727.3, the probation department is not required to provide additional documentation to comply with this section.

(c) For purposes of this section, compelling reasons for not terminating parental rights are those described in subdivision (i) of Section 727.3.

(d) For purposes of this section, 15 out of the 22 months shall be calculated from the ''date of entry into foster care,'' as defined in paragraph (4) of subdivision (d) of Section 727.4. When a child experiences multiple exits from and entries into foster care during the 22-month period, the 15 months shall be calculated by adding the total number of months the child spent in foster care in the past 22 months. However, trial home visits and runaway episodes may not be included in calculating the 15 months in foster care.

(e) Upon setting a hearing pursuant to Section 727.31, the probation department shall concurrently make efforts to identify an approved family for adoption.

SEC. 7. Section 827.9 is added to the Welfare and Institutions Code, to read:

827.9. (a) It is the intent of the Legislature to reaffirm its belief that records or information gathered by law enforcement agencies relating to the taking of a minor into custody, temporary custody, or detention (juvenile police records) should be confidential. Confidentiality is necessary to protect those persons from being denied various opportunities, to further the rehabilitative efforts of the juvenile justice system, and to prevent the lifelong stigma that results from having a juvenile police record. Although these records generally should remain confidential, the Legislature recognizes that certain circumstances require the release of juvenile police records to specified persons and entities. The purpose of this section is to clarify the persons and entities entitled to receive a complete copy of a juvenile police record, to specify the persons or entities entitled to receive copies of juvenile police records with certain identifying information about other minors removed from the record, and to provide procedures for others to request a copy of a juvenile police record. This section does not govern the release of police records involving a minor who is the witness to or victim of a crime who is protected by other laws including, but not limited to, Section 841.5 of the Penal Code, Section 11167 et seq. of the Penal Code, and Section 6254 of the Government Code.

(b) Except as provided in Sections 389 and 781 of this code or Section 1203.45 of the Penal Code, a law enforcement agency shall release, upon request, a complete copy of a juvenile police record, as defined in subdivision (m), without notice or consent from the person who is the subject of the juvenile police record to the following persons or entities:

(1) Other California law enforcement agencies including the office of the Attorney General of California, any district attorney, the Department

of Corrections, the Department of the Youth Authority, and any peace officer as specified in subdivision (a) of Section 830.1 of the Penal Code.

(2) School district police.

(3) Child protective agencies as defined in Section 11165.9 of the Penal Code.

(4) The attorney representing the juvenile who is the subject of the juvenile police record in a criminal or juvenile proceeding.

(c) Except as provided in Sections 389 and 781 of this code or Section 1203.45 of the Penal Code, law enforcement agencies shall release, upon request, a copy of a juvenile police record to the following persons and entities only if identifying information pertaining to any other juvenile, within the meaning of subdivision (n), has been removed from the record:

(1) The person who is the subject of the juvenile police record.

(2) The parents or guardian of a minor who is the subject of the juvenile police record.

(3) An attorney for a parent or guardian of a minor who is the subject of the juvenile police record.

(d) (1) (A) If a person or entity listed in subdivision (c) seeks to obtain a complete copy of a juvenile police record that contains identifying information concerning the taking into custody or detention of any other juvenile, within the meaning of subdivision (n), who is not a dependent child or a ward of the juvenile court, that person or entity shall submit a completed Petition to Obtain Report of Law Enforcement Agency, as developed pursuant to subdivision (i), to the appropriate law enforcement agency. The law enforcement agency shall send a notice to the following persons that a Petition to Obtain Report of Law Enforcement Agency has been submitted to the agency:

(i) The juvenile about whom information is sought.

(ii) The parents or guardian of any minor described in subparagraph (i). The law enforcement agency shall make reasonable efforts to obtain the address of the parents or guardian.

(B) For purposes of responding to a request submitted pursuant to this subdivision, a law enforcement agency may check the Juvenile Automated Index or may contact the juvenile court to determine whether a person is a dependent child or a ward of the juvenile court and whether parental rights have been terminated or the juvenile has been emancipated.

(C) The notice sent pursuant to this subdivision shall include the following information:

(i) The identity of the person or entity requesting a copy of the juvenile police record.

(ii) A copy of the completed Petition to Obtain Report of Law Enforcement Agency.

(iii) The time period for submitting an objection to the law enforcement agency, which shall be 20 days if notice is provided by mail or confirmed fax, or 15 days if notice is provided by personal service.

(iv) The means to submit an objection.

A law enforcement agency shall issue notice pursuant to this section within 20 days of the request. If no objections are filed, the law enforcement agency shall release the juvenile police record within 15 days of the expiration of the objection period.

(D) If any objections to the disclosure of the other juvenile's information are submitted to the law enforcement agency, the law enforcement agency shall send the completed Petition to Obtain Report of Law Enforcement Agency, the objections, and a copy of the requested juvenile police record to the presiding judge of the juvenile court or, in counties with no presiding judge of the juvenile court, the judge of the juvenile court or his or her designee, to obtain authorization from the court to release a complete copy of the juvenile police record.

(2) If a person or entity listed in subdivision (c) seeks to obtain a complete copy of a juvenile police record that contains identifying information concerning the taking into custody or detention of any other juvenile, within the meaning of subdivision (n), who is a dependent child or a ward of the juvenile court, that person or entity shall submit a Petition to Obtain Report of Law Enforcement Agency, as developed pursuant to subdivision (i), to the appropriate law enforcement agency. The law enforcement agency shall send that Petition to Obtain Report of Law Enforcement Agency and a completed petition for authorization to release the information to that person or entity along with a complete copy of the requested juvenile police record to the presiding judge of the juvenile court, or, in counties with no presiding judge of the juvenile court, the judge of the juvenile court or his or her designees. The juvenile court shall provide notice of the petition for authorization to the following persons:

(A) If the person who would be identified if the information is released is a minor who is a dependent child of the juvenile court, notice of the petition shall be provided to the following persons:

(i) The minor.

(ii) The attorney of record for the minor.

(iii) The parents or guardian of the minor, unless parental rights have been terminated.

(iv) The child protective agency responsible for the minor.

(v) The attorney representing the child protective agency responsible for the minor.

(B) If the person who would be identified if the information is released is a ward of the juvenile court, notice of the petition shall be provided to the following:

(i) The ward.

(ii) The attorney of record for the ward.

(iii) The parents or guardian of the ward if the ward is under 18 years of age, unless parental rights have been terminated.

(iv) The district attorney.

(v) The probation department.

(e) Except as otherwise provided in this section or in Sections 389 and 781 of this code or Section 1203.45 of the Penal Code, law enforcement agencies shall release copies of juvenile police records to any other person designated by court order upon the filing of a Petition to Obtain Report of Law Enforcement Agency with the juvenile court. The petition shall be filed with the presiding judge of the juvenile court, or, in counties with no presiding judge of the juvenile court, the judge of the juvenile court or his or her designee, in the county where the juvenile police record is maintained.

(f) (1) After considering the petition and any objections submitted to the juvenile court pursuant to paragraph (1) or (2) of subdivision (d), the court shall determine whether the law enforcement agency may release a complete copy of the juvenile police record to the person or entity that submitted the request.

(2) In determining whether to authorize the release of a juvenile police record, the court shall balance the interests of the juvenile who is the subject of the record, the petitioner, and the public. The juvenile court may issue orders prohibiting or limiting the release of information contained in the juvenile police record. The court may also deny the existence of a juvenile police record where the record is properly sealed or the juvenile who is the subject of the record has properly denied its existence.

(3) Prior to authorizing the release of any juvenile police record, the juvenile court shall ensure that notice and an opportunity to file an objection to the release of the record has been provided to the juvenile who is the subject of the record or who would be identified if the information is released, that person's parents or guardian if he or she is under 18 years of age, and any additional person or entity described in subdivision (d), as applicable. The period for filing an objection shall be 20 days from the date notice is given if notice is provided by mail or confirmed fax and 15 days from the date notice is given if notice is provided by personal service. If review of the petition is urgent, the petitioner may file a motion with the presiding judge of the juvenile court showing good cause why the objection period should be shortened. The court shall issue a ruling on the completed petition within 15 days of the expiration of the objection period.

(g) Any out-of-state entity comparable to the California entities listed in paragraphs (1) to (5), inclusive, of subdivision (b) shall file a petition

with the presiding judge of the juvenile court in the county where the juvenile police record is maintained in order to receive a copy of a juvenile police record. A petition from that entity may be granted on an ex parte basis.

(h) Nothing in this section shall require the release of confidential victim or witness information protected by other laws including, but not limited to, Section 841.5 of the Penal Code, Section 11167 et seq. of the Penal Code, and Section 6254 of the Government Code.

(i) The Judicial Council, in consultation with the California Law Enforcement Association of Record Supervisors (CLEARS), shall develop forms for distribution by law enforcement agencies to the public to implement this section. Those forms shall include, but are not limited to, the Petition to Obtain Report of Law Enforcement Agency. The material for the public shall include information about the persons who are entitled to a copy of the juvenile police record and the specific procedures for requesting a copy of the record if a petition is necessary. The Judicial Council shall provide law enforcement agencies with suggested forms for compliance with the notice provisions set forth in subdivision (d).

(j) Any information received pursuant to subdivisions (a) to (e), inclusive, and (g) of this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated. An intentional violation of the confidentiality provisions of this section is a misdemeanor, punishable by a fine not to exceed five hundred dollars ($500).

(k) A court shall consider any information relating to the taking of a minor into custody, if the information is not contained in a record which has been sealed, for purposes of determining whether an adjudication of the commission of a crime as a minor warrants a finding that there are circumstances in aggravation pursuant to Section 1170 of the Penal Code or to deny probation.

(*l*) When a law enforcement agency has been notified pursuant to Section 1155 that a minor has escaped from a secure detention facility, the law enforcement agency shall release the name of, and any descriptive information about, the minor to a person who specifically requests this information. The law enforcement agency may release the information on the minor without a request to do so if it finds that release of the information would be necessary to assist in recapturing the minor or that it would be necessary to protect the public from substantial physical harm.

(m) For purposes of this section, a ''juvenile police record'' refers to records or information relating to the taking of a minor into custody, temporary custody, or detention.

(n) For purposes of this section, with respect to a juvenile police record, ''any other juvenile'' refers to additional minors who were taken into custody or temporary custody, or detained and who also could be considered a subject of the juvenile police record.

(o) An evaluation of the efficacy of the procedures for the release of police records containing information about minors as described in this section shall be conducted by the juvenile court and law enforcement in Los Angeles County and the results of that evaluation shall be reported to the Legislature on or before December 31, 2006.

(p) This section shall only apply to Los Angeles County.

SEC. 8. Section 828 of the Welfare and Institutions Code is amended to read:

828. (a) Except as provided in Sections 389, 781, and 827.9 of this code or Section 1203.45 of the Penal Code, any information gathered by a law enforcement agency relating to the taking of a minor into custody may be disclosed to another law enforcement agency, including a school district police or security department, or to any person or agency which has a legitimate need for the information for purposes of official disposition of a case. When the disposition of a taking into custody is available, it shall be included with any information disclosed.

A court shall consider any information relating to the taking of a minor into custody, if the information is not contained in a record which has been sealed, for purposes of determining whether adjudications of commission of crimes as a juvenile warrant a finding that there are circumstances in aggravation pursuant to Section 1170 of the Penal Code or to deny probation.

(b) When a law enforcement agency has been notified pursuant to Section 1155 that a minor has escaped from a secure detention facility, the law enforcement agency shall release the name of, and any descriptive information about, the minor to a person who specifically requests this information. The law enforcement agency may release the information on the minor without a request to do so if it finds that release of the information would be necessary to assist in recapturing the minor or that it would be necessary to protect the public from substantial physical harm.

SEC. 9. Due to the unique circumstances of Los Angeles County with respect to juvenile records, 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 7 of this act is necessarily applicable only to Los Angeles County.

SEC. 10. 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.

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## CHAPTER 831

An act to amend Sections 628, 636, 636.1, 658, 706.6, 727.1, 727.31, 727.4, and 728 of, to add Section 727.32 to, and to repeal and add Sections 706.5, 727.2, and 727.3 of, the Welfare and Institutions Code, relating to minors.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 628 of the Welfare and Institutions Code is amended to read:

628. (a) Upon delivery to the probation officer of a minor who has been taken into temporary custody under the provisions of this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his or her being taken into custody and shall immediately release the minor to the custody of his or her parent, legal guardian, or responsible relative unless it can be demonstrated upon the evidence before the court that continuance in the home is contrary to the minor's welfare and one or more of the following conditions exist:

(1) The minor is in need of proper and effective parental care or control and has no parent, legal guardian, or responsible relative; or has no parent, legal guardian, or responsible relative willing to exercise or capable of exercising that care or control; or has no parent, legal guardian, or responsible relative actually exercising that care or control.

(2) The minor is destitute or is not provided with the necessities of life or is not provided with a home or suitable place of abode.

(3) The minor is provided with a home which is an unfit place for him or her by reason of neglect, cruelty, depravity or physical abuse by either of his or her parents, or by his or her legal guardian or other person in whose custody or care he or she is entrusted.

(4) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor or reasonable necessity for the protection of the person or property of another.

(5) The minor is likely to flee the jurisdiction of the court.

(6) The minor has violated an order of the juvenile court.

(7) The minor is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

(b) If the probation officer has reason to believe that the minor is at risk of entering foster care placement as defined in paragraphs (1) and (2) of subdivision (d) of Section 727.4, then the probation officer shall, as part of the investigation undertaken pursuant to subdivision (a), make reasonable efforts, as described in paragraph (5) of subdivision (d) of Section 727.4, to prevent or eliminate the need for removal of the minor from his or her home.

(c) In any case in which there is reasonable cause for believing that a minor 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 subdivision (d) of Section 300, the minor shall be deemed to have been taken into temporary custody and delivered to the probation officer for the purposes of this chapter while he or she is at the office of the physician or surgeon or that medical facility.

SEC. 2. Section 636 of the Welfare and Institutions Code is amended to read:

636. (a) If it appears upon the hearing that the minor has violated an order of the juvenile court or has escaped from a commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that he or she be detained or that the minor is likely to flee to avoid the jurisdiction of the court, and that continuance in the home is contrary to the minor's welfare, the court may make its order that the minor be detained in the juvenile hall or other suitable place designated by the juvenile court for a period not to exceed 15 judicial days and shall enter said order together with its findings of fact in support thereof in the records of the court. The circumstances and gravity of the alleged offense may be considered, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or the person or property of another that the minor be detained.

(b) If the court finds that the criteria of Section 628.1 are applicable, the court shall place the minor on home supervision for a period not to exceed 15 judicial days, and shall enter the order together with its findings of fact in support thereof in the records of the court. If the court releases the minor on home supervision, the court may continue, modify, or augment any conditions of release previously imposed by the probation officer, or may impose new conditions on a minor released for the first time. If there are new or modified conditions, the minor shall be required to sign a written promise to obey those conditions pursuant to Section 628.1.

(c) If the probation officer is recommending that the minor be detained, the probation officer shall submit to the court documentation, as follows:

(1) Documentation that continuance in the home is contrary to the minor's welfare shall be submitted to the court as part of the detention report prepared pursuant to Section 635.

(2) Documentation that reasonable efforts were made to prevent or eliminate the need for removal of the minor from the home and documentation of the nature and results of the services provided shall be submitted to the court either as part of the detention report prepared pursuant to Section 635, or as part of a case plan prepared pursuant to Section 636.1, but in no case later than 30 days from the date of detention.

(d) Before detaining the minor, the court shall determine whether continuance in the home is contrary to the minor's welfare and whether there are available services that would prevent the need for further detention. The court shall make that determination on a case-by-case basis and shall make reference to the documentation provided by the probation officer or other evidence relied upon in reaching its decision.

(1) If the minor can be returned to the custody of his or her parent or legal guardian at the detention hearing, through the provision of services to prevent removal, the court shall release the minor to the physical custody of his or her parent or legal guardian and order that those services shall be provided.

(2) If the minor cannot be returned to the custody of his or her parent or legal guardian at the detention hearing, the court shall state the facts upon which the detention is based. The court shall make the following findings on the record and reference the probation officer's report or other evidence relied upon to make its determinations:

(A) Whether continuance in the home of the parent or legal guardian is contrary to the minor's welfare.

(B) Whether reasonable efforts have been made to safely maintain the minor in the home of his or her parent or legal guardian and to prevent or eliminate the need for removal of the minor from his or her home. This

finding shall be made at the detention hearing if possible, but in no case later than 60 days following the minor's removal from the home.

(3) If the minor cannot be returned to the custody of his or her parent or legal guardian at the detention hearing, the court shall make the following orders:

(A) The probation officer shall provide services as soon as possible which will enable the minor's parent or legal guardian to obtain such assistance as may be needed to enable the parent or guardian to effectively provide the care and control necessary for the minor to return to the home.

(B) The minor's placement and care shall be the responsibility of the probation department pending disposition or further order of the court.

(4) If the matter is set for rehearing pursuant to Section 637, or continued pursuant to Section 638, or continued for any other reason, the court shall find that the continuance of the minor in the parent's or guardian's home is contrary to the minor's welfare at the initial petition hearing or order the release of the minor from custody.

(e) Whether the minor is returned home or detained, the court shall order the minor's parent or guardian to cooperate with the probation officer in obtaining those services described in paragraph (1) or in subparagraph (A) of paragraph (3).

SEC. 3. Section 636.1 of the Welfare and Institutions Code is amended to read:

636.1. (a) When a minor is detained pursuant to Section 636 following a finding by the court that continuance in the home is contrary to the minor's welfare and the minor is at risk of entering foster care, the probation officer shall, within 30 calendar days of initial removal, or by the date of the disposition hearing, whichever occurs first, complete a case plan.

(b) If the probation officer believes that reasonable efforts by the minor, his or her parent or legal guardian, and the probation officer will enable the minor to safely return home, the case plan shall focus on those issues and activities associated with those efforts, including a description of the strengths and needs of the minor and his or her family and identification of the services that will be provided to the minor and his or her family in order to reduce or eliminate the need for the minor to be placed in foster care and make it possible for the minor to safely return to his or her home.

(c) If, based on the information available to the probation officer, the probation officer believes that foster care placement is the most appropriate disposition, the case plan shall include all the information required by Section 706.6.

SEC. 4. Section 658 of the Welfare and Institutions Code is amended to read:

658. (a) Except as provided in subdivision (b), upon the filing of the petition, the clerk of the juvenile court shall issue a notice, to which shall be attached a copy of the petition, and he or she shall cause the same to be served upon the minor, if the minor is eight or more years of age, and upon each of the persons described in subdivision (e) of Section 656 whose residence addresses are set forth in the petition and thereafter before the hearing upon all persons whose residence addresses become known to the clerk. If the court has ordered the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727, the clerk shall also issue a copy of that notice to any foster parents, preadoptive parents, legal guardians or relatives providing care to the minor. The clerk shall issue a copy of the petition, to the minor's attorney and to the district attorney, if the district attorney has notified the clerk of the court that he or she wishes to receive the petition, containing the time, date, and place of the hearing.

(b) Upon the filing of a supplemental petition where the minor has been declared a ward of the court or a probationer under Section 602 in the original matter, the clerk of the juvenile court shall issue a notice, to which shall be attached a copy of the petition, and he or she shall cause the notice to be served upon the minor, if the minor is eight or more years of age, and upon each of the persons described in subdivision (e) of Section 656 whose residence addresses are set forth in the supplemental petition and thereafter known to the clerk. The clerk shall issue a copy of the supplemental petition to the minor's attorney, and to the district attorney if the probation officer is the petitioner, or, to the probation officer if the district attorney is the petitioner, containing the time, date, and place of the hearing. If the court has ordered the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727, the clerk shall also issue a copy of that notice to any foster parents, preadoptive parents, legal guardians, or relatives providing care to the minor.

SEC. 5. Section 706.5 of the Welfare and Institutions Code is repealed.

SEC. 6. Section 706.5 is added to the Welfare and Institutions Code, to read:

706.5. (a) In any case where placement in foster care is recommended by the probation officer, or where the minor is already in foster care placement or pending placement pursuant to an earlier order, the social study prepared by the probation officer that is received into evidence at disposition pursuant to Section 706 shall include a case plan, as described in Section 706.6. If the court elects to hold the first status review at the disposition hearing, then the social study shall also include,

but not be limited to, the factual material described in subdivision (c) of this section.

(b) In any case where placement in foster care is not recommended by the probation officer prior to disposition, but the court orders foster care placement, the court shall order the probation officer to prepare a case plan, as described in Section 706.6, within 30 days of the placement order. The case plan shall be filed with the court.

(c) At each status review hearing, the social study shall include, but not be limited to, an updated case plan as described in Section 706.6 and the following information:

(1) The continuing necessity for and appropriateness of the placement.

(2) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the minor to the minor's home or to complete whatever steps are necessary to finalize the permanent placement of the minor.

(3) The extent of progress that has been made by the minor and parent or guardian toward alleviating or mitigating the causes necessitating placement in foster care.

(4) If the first permanency planning hearing has not yet occurred, the social study shall include the likely date by which the minor may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, permanently placed with a fit and willing relative, or referred to another planned permanent living arrangement.

(5) Whether the minor has been or will be referred to educational services and what services the minor is receiving, including special education and related services if the minor has exceptional needs as described in Part 30 (commencing with Section 56000) of Division 4 of Title 2 of the Education Code or accommodations if the child has disabilities as described in Chapter 16 (commencing with Section 701) of Title 29 of the United States Code Annotated. The probation officer or child advocate shall solicit comments from the appropriate local education agency prior to completion of the social study.

(6) Whether the right of the parent or guardian to make educational decisions for the minor should be limited by the court pursuant to Section 7579.5 of the Government Code.

(d) At each permanency planning hearing, the social study shall include, but not be limited to, an updated case plan as described in Section 706.6, the factual material described in subdivision (c) of this section, and a recommended permanent plan for the minor.

SEC. 7. Section 706.6 of the Welfare and Institutions Code is amended to read:

706.6. A case plan prepared as required by Section 706.5 shall be submitted to the court. It shall either be attached to the social study or

incorporated as a separate section within the social study. The case plan shall include, but not be limited to, the following information:

(a) A description of the circumstances that resulted in the minor being placed under the supervision of the probation department and in foster care.

(b) An assessment of the minor's and family's strengths and needs and the type of placement best equipped to meet those needs.

(c) A description of the type of home or institution in which the minor is to be placed, including a discussion of the safety and appropriateness of the placement. An appropriate placement is a placement in the least restrictive, most family-like environment, in closest proximity to the minor's home, that meets the minor's best interests and special needs.

(d) Specific time-limited goals and related activities designed to enable the safe return of the minor to his or her home, or in the event that return to his or her home is not possible, activities designed to result in permanent placement or emancipation. Specific responsibility for carrying out the planned activities shall be assigned to one or more of the following:

(1) The probation department.

(2) The minor's parent or parents or legal guardian or guardians, as applicable.

(3) The minor.

(4) The foster parents or licensed agency providing foster care.

(e) The projected date of completion of the case plan objectives and the date services will be terminated.

(f) Scheduled visits between the minor and his or her family and an explanation if no visits are made.

(g) (1) When 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 minor's parent or legal guardian or out-of-state, the case plan shall specify the reasons why the placement is the most appropriate and is in the best interest of the minor.

(2) When an out-of-state group home placement is recommended or made, the case plan shall comply with Section 727.1 and Section 7911.1 of the Family Code. In addition, documentation of the recommendation of the multidisciplinary team and the rationale for this particular placement shall be included. The case plan shall also address what in-state services or facilities were used or considered and why they were not recommended.

(h) If applicable, efforts to make it possible to place siblings together, unless it has been determined that placement together is not in the best interest of one or more siblings.

(i) A schedule of visits between the minor and the probation officer, including a monthly visitation schedule for those children placed in group homes.

(j) Health and education information about the minor, school records, immunizations, known medical problems, and any known medications the minor may be taking, names and addresses of the minor's health and educational providers; the minor's grade level performance; assurances that the minor's placement in foster care takes into account proximity to the school in which the minor was enrolled at the time of placement; and other relevant health and educational information.

(k) When out-of-home services are used and the goal is reunification, the case plan shall describe the services that were provided to prevent removal of the minor from the home, those services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail.

(*l*) The updated case plan prepared for a permanency planning hearing shall include a recommendation for a permanent plan for the minor. If, after considering reunification, adoptive placement, legal guardianship, or permanent placement with a fit and willing relative the probation officer recommends placement in a planned permanent living arrangement, the case plan shall include documentation of a compelling reason or reasons why termination of parental rights is not in the minor's best interest. For purposes of this subdivision, a ''compelling reason'' shall have the same meaning as in subdivision (c) of Section 727.3.

(m) Each updated case plan shall include a description of the services that have been provided to the minor under the plan and an evaluation of the appropriateness and effectiveness of those services.

(n) A statement that the parent or legal guardian, and the minor have had an opportunity to participate in the development of the case plan, to review the case plan, to sign the case plan, and to receive a copy of the plan, or an explanation about why the parent, legal guardian, or minor was not able to participate or sign the case plan.

(o) For a minor in out-of-home care who is 16 years of age or older, a written description of the programs and services, which will help the minor prepare for the transition from foster care to independent living.

SEC. 8. Section 727.1 of the Welfare and Institutions Code is amended to read:

727.1. (a) When the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most family like, 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 minor's special needs and best interests. 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.

(b) Unless otherwise authorized by law, the court may not order the placement of a minor who is adjudged a ward of the court on the basis that he or she is a person described by either Section 601 or 602 in a private residential facility or program that provides 24-hour supervision, outside of the state, unless the court finds, in its order of placement, that all of the following conditions are met:

(1) In-state facilities or programs have been determined to be unavailable or inadequate to meet the needs of the minor.

(2) The State Department of Social Services or its designee has performed initial and continuing inspection of the out-of-state residential facility or program and has either certified that the facility or program meets all licensure standards required of group homes operated in California or that the department has granted a waiver to a specific licensing standard upon a finding that there exists no adverse impact to health and safety, pursuant to subdivision (c) of Section 7911.1 of the Family Code.

(3) The requirements of Section 7911.1 of the Family Code are met.

(c) If, upon inspection, the probation officer of the county in which the minor is adjudged a ward of the court determines that the out-of-state facility or program is not in compliance with the standards required under paragraph (2) of subdivision (b) or has an adverse impact on the health and safety of the minor, the probation officer may temporarily remove the minor from the facility or program. The probation officer shall promptly inform the court of the minor's removal, and shall return the minor to the court for a hearing to review the suitability of continued out-of-state placement. The probation officer shall, within one business day of removing the minor, notify the State Department of Social Services' Compact Administrator, and, within five working days, submit a written report of the findings and actions taken.

(d) The court shall review each of these placements for compliance with the requirements of subdivision (b) at least once every six months.

(e) The county shall not be entitled to receive or expend any public funds for the placement of a minor in an out-of-state group home unless the conditions of subdivisions (b) and (d) are met.

SEC. 9. Section 727.2 of the Welfare and Institutions Code is repealed.

SEC. 10. Section 727.2 is added to the Welfare and Institutions Code, to read:

727.2. The purpose of this section is to provide a means to monitor the safety and well-being of every minor in foster care who has been

declared a ward of the juvenile court pursuant to Section 601 or 602 and to ensure that everything reasonably possible is done to facilitate the safe and early return of the minor to his or her home or to establish an alternative permanent plan for the minor.

(a) Whenever the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the juvenile court shall order the probation department to ensure the provision of reunification services to facilitate the safe return of the minor to his or her home or the permanent placement of the minor, and to address the needs of the minor while in foster care, except as provided in subdivision (b) of this section.

(b) Reunification services need not be provided to a parent or legal guardian when the court finds by clear and convincing evidence that one or more of the following is true:

(1) Reunification services were previously terminated for that parent or guardian, pursuant to Section 366.21 or 366.22, or not offered, pursuant to subdivision (b) of Section 361.5, in reference to the same minor.

(2) The parent has been convicted of:

(A) Murder of another child of the parent.

(B) Voluntary manslaughter of another child of the parent.

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter.

(D) A felony assault that results in serious bodily injury to the minor or another child of the parent.

(3) The parental rights of the parent with respect to a sibling have been terminated involuntarily, and it is not in the best interest of the minor to reunify with his or her parent or legal guardian.

If no reunification services are offered to the parent or guardian, the permanency planning hearing, as described in Section 727.3, shall occur within 30 days of the date of the hearing at which the decision is made not to offer services.

(c) The status of every minor declared a ward and ordered to be placed in foster care shall be reviewed by the court no less frequently than once every six months. The six-month time periods shall be calculated from the date the minor entered foster care, as defined in paragraph (4) of subdivision (d) of Section 727.4. If the court so elects, the court may declare the hearing at which the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section 727 at the first status review hearing. It shall be the duty of the probation officer to prepare a written social study report including an updated case plan, pursuant to subdivision (b) of Section 706.5, and submit the report to the court prior to each status review hearing, pursuant to subdivision (b) of

Section 727.4. The social study report shall include all reports the probation officer relied upon in making his or her recommendations.

(d) Prior to any status review hearing involving a minor in the physical custody of a community care facility or foster family agency, the facility or agency may provide the probation officer with a report containing its recommendations. Prior to any status review hearing involving the physical custody of a foster parent, relative caregiver, preadoptive parent, or legal guardian, that person may present to the court a report containing his or her recommendations. The court shall consider all reports and recommendations filed pursuant to subdivision (c) and pursuant to this subdivision.

(e) At any status review hearing prior to the first permanency planning hearing, the court shall consider the safety of the minor and make findings and orders which determine the following:

(1) The continuing necessity for and appropriateness of the placement.

(2) The extent of the probation department's compliance with the case plan in making reasonable efforts to safely return the minor to the minor's home or to complete whatever steps are necessary to finalize the permanent placement of the minor.

(3) The extent of progress that has been made by the minor and parent or guardian toward alleviating or mitigating the causes necessitating placement in foster care.

(4) The likely date by which the minor may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, permanently placed with a fit and willing relative or referred to another planned permanent living arrangement.

(5) In the case of a minor who has reached 16 years of age, the court shall, in addition, determine the services needed to assist the minor to make the transition from foster care to independent living.

The court shall make these determinations on a case-by-case basis and reference in its written findings the probation officer's report and any other evidence relied upon in reaching its decision.

(f) At any status review hearing prior to the first permanency hearing, the court shall order return of the minor to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of evidence, that the return of the minor to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. In making its determination, the court shall review and consider the social study report, recommendations, and the case plan pursuant to subdivision (b) of Section 706.5, the report and recommendations of any child advocate appointed for the minor in the

case, and any other reports submitted to the court pursuant to subdivision (d), and shall consider the efforts or progress, or both, demonstrated by the minor and family and the extent to which the minor availed himself or herself of the services provided.

(g) At all status review hearings subsequent to the first permanency planning hearing, the court shall consider the safety of the minor and make the findings and orders as described in paragraphs (1) to (3), inclusive, and paragraph (5) of subdivision (e). The court shall either make a finding that the previously ordered permanent plan continues to be appropriate, or, shall order that a new permanent plan be adopted pursuant to subdivision (b) of Section 727.3. However, the court shall not order a permanent plan of ''return to the physical custody of the parent or legal guardian after further reunification services are offered,'' as described in paragraph (2) of subdivision (b) of Section 727.3.

(h) The status review hearings required by subdivision (c) may be heard by an administrative review panel, provided that the administrative panel meets all of the requirements listed in subparagraph (B) of paragraph (7) of subdivision (d) of Section 727.4.

SEC. 11. Section 727.3 of the Welfare and Institutions Code is repealed.

SEC. 12. Section 727.3 is added to the Welfare and Institutions Code, to read:

727.3. The purpose of this section is to provide a means to monitor the safety and well-being of every minor in foster care who has been declared a ward of the juvenile court pursuant to Section 601 or 602 and to ensure that everything reasonably possible is done to facilitate the safe and early return of the minor to his or her own home or to establish an alternative permanent plan for the minor.

(a) (1) For every minor declared a ward and ordered to be placed in foster care, a permanency planning hearing shall be conducted within 12 months of the date the minor entered foster care, as defined in paragraph (4) of subdivision (d) of Section 727.4. Subsequent permanency planning hearings shall be conducted periodically, but no less frequently than once every 12 months thereafter during the period of placement. It shall be the duty of the probation officer to prepare a written social study report including an updated case plan and a recommendation for a permanent plan, pursuant to subdivision (c) of Section 706.5, and submit the report to the court prior to each permanency planning hearing, pursuant to subdivision (b) of Section 727.4.

(2) Prior to any permanency planning hearing involving a minor in the physical custody of a community care facility or foster family agency, the facility or agency may file with the court a report containing its recommendations, in addition to the probation officer's social study. Prior to any permanency planning hearing involving the physical

custody of a foster parent, relative caregiver, preadoptive parent, or legal guardian, that person may present to the court a report containing his or her recommendations. The court shall consider all reports and recommendations filed pursuant to this subdivision.

(3) If the minor has a continuing involvement with his or her parents or legal guardians, the parents or legal guardians shall be involved in the planning for a permanent placement. The court order placing the minor in a permanent placement shall include a specification of the nature and frequency of visiting arrangements with the parents or legal guardians.

(4) At each permanency planning hearing, the court shall order a permanent plan for the minor, as described in subdivision (b). The court shall also make findings, as described in subdivision (e) of Section 727.2. In the case of a minor who has reached 16 years of age or older, the court shall, in addition, determine the services needed to assist the minor to make the transition from foster care to independent living. The court shall make all of these determinations on a case-by-case basis and make reference to the probation officer's report, the case plan, or other evidence relied upon in making its decisions.

(b) At all permanency planning hearings, the court shall determine the permanent plan for the minor. The court shall order one of the following permanent plans, which are, in order of priority:

(1) Return of the minor to physical custody of the parent or legal guardian. The court shall order the return of the minor to the physical custody of his or her parent or legal guardian unless:

(A) Reunification services were not offered, pursuant to subdivision (b) of Section 727.2.

(B) The court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. In making its determination, the court shall review and consider the social study report and recommendations pursuant to Section 706.5, the report and recommendations of any child advocate appointed for the minor in the case, and any other reports submitted pursuant to paragraph (2) of subdivision (a), and shall consider the efforts or progress, or both, demonstrated by the minor and family and the extent to which the minor availed himself or herself of the services provided.

(2) Order that the permanent plan for the minor will be to return the minor to the physical custody of the parent or legal guardian, order further reunification services to be provided to the minor and his or her parent or legal guardian for a period not to exceed six months and continue the case for up to six months for a subsequent permanency planning hearing, provided that the subsequent hearing shall occur

within 18 months of the date the minor was originally taken from physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or guardian. For purposes of this section, in order to find that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or legal guardian, the court shall be required to find that the minor and his or her parent or legal guardian have demonstrated the capacity and ability to complete the objectives of the case plan.

The court shall inform the parent or legal guardian that if the minor cannot be returned home by the next permanency planning hearing, a proceeding pursuant to Section 727.31 may be initiated.

The court shall not continue the case for further reunification services if it has been 18 months or more since the date the minor was originally taken from the physical custody of his or her parent or legal guardian.

(3) Identify adoption as the permanent plan and order that a hearing be held within 120 days, pursuant to the procedures described in Section 727.31. The court shall only set a hearing pursuant to Section 727.31 if there is clear and convincing evidence that reasonable services have been provided or offered to the parents. When the court sets a hearing pursuant to Section 727.31, it shall order that an adoption assessment report be prepared, pursuant to subdivision (b) of Section 727.31.

(4) Order a legal guardianship, pursuant to procedures described in subdivisions (c) to (f), inclusive, of Section 728.

(5) Place the minor with a fit and willing relative. ''Placement with a fit and willing relative'' means placing the minor with an appropriate relative on a permanent basis. When a minor is placed with a fit and willing relative, the court may authorize the relative to provide the same legal consent for the minor's medical, surgical, and dental care, and education as the custodial parent of the minor.

(6) Place the minor in a planned permanent living arrangement. A ''planned permanent living arrangement'' means any permanent living arrangement described in Section 11402 and not listed in paragraphs (1) to (5), inclusive, such as placement in a specific, identified foster family home, program, or facility on a permanent basis, or placement in a transitional housing placement facility. When the court places a minor in a planned permanent living arrangement, the court shall specify the goal of the placement, which may include, but shall not be limited to, return home, emancipation, guardianship, or permanent placement with a relative.

The court shall only order that the minor remain in a planned permanent living arrangement if the court finds by clear and convincing evidence, based upon the evidence already presented to it that there is a compelling reason, as defined in subdivision (c), for determining that a plan of termination of parental rights and adoption is not in the best interest of the minor.

(c) A compelling reason for determining that a plan of termination of parental rights and adoption is not in the best interest of the minor is any of the following:

(1) Documentation by the probation department that adoption is not in the best interest of the minor and is not an appropriate permanency goal. That documentation may include, but is not limited to, documentation that:

(A) The minor is 12 years of age or older and objects to termination of parental rights.

(B) The minor is an older teen who specifically requests that emancipation be established as his or her permanent plan.

(C) The parent or guardian and the minor have a significant bond, but the parent or guardian is unable to care for the minor because of an emotional or physical disability, and the minor's caregiver has committed to raising the minor to the age of majority and facilitating visitation with the disabled parent or guardian.

(D) The minor agrees to continued placement in a residential treatment facility that provides services specifically designed to address the minor's treatment needs, and the minor's needs could not be served by a less restrictive placement.

The probation department's recommendation that adoption is not in the best interest of the minor shall be based on the present family circumstances of the minor and shall not preclude a different recommendation at a later date if the minor's family circumstances change.

(2) Documentation by the probation department that no grounds exist to file for termination of parental rights.

(3) Documentation by the probation department that the minor is an unaccompanied refugee minor, or there are international legal obligations or foreign policy reasons that would preclude terminating parental rights.

(4) A finding by the court that the probation department was required to make reasonable efforts to reunify the minor with the family pursuant to subdivision (a) of Section 727.2, and did not make those efforts.

(5) Documentation by the probation department that the minor is living with a relative who is unable or unwilling to adopt the minor because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the minor,

but who is willing and capable of providing the minor with a stable and permanent home environment, and the removal of the minor from the physical custody of his or her relative would be detrimental to the minor's emotional well-being.

(d) Nothing in this section shall be construed to limit the ability of a parent to voluntarily relinquish his or her child to 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 or to a licensed county adoption agency at any time while the minor is a ward of the juvenile court if the department or agency is willing to accept the relinquishment.

(e) Any change in the permanent plan of a minor placed with a fit and willing relative or in a planned permanent living arrangement shall be made only by order of the court pursuant to a Section 778 petition or at a regularly scheduled and noticed status review hearing or permanency planning hearing. Any change in the permanent plan of a minor placed in a guardianship shall be made only by order of the court pursuant to a motion filed in accordance with Section 728.

SEC. 13. Section 727.31 of the Welfare and Institutions Code is amended to read:

727.31. (a) This section applies to all minors placed in out-of-home care pursuant to Section 727.2 or 727.3 and for whom the juvenile court orders a hearing to consider permanently terminating parental rights to free the minor for adoption.

Except for subdivision (j) of Section 366.26, the procedures for permanently terminating parental rights for minors described by this section shall proceed exclusively pursuant to Section 366.26.

At the beginning of any proceeding pursuant to this section, if the minor is not being represented by previously retained or appointed counsel, the court shall appoint counsel to represent the minor, and the minor shall be present in court unless the minor or the minor's counsel so requests and the court so orders. If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and the parent. Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses as specified in subdivision (f) of paragraph (3) of Section 366.26.

(b) Whenever the court orders that a hearing pursuant to this section shall be held, it shall direct the agency supervising the minor and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include all of the following:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount and nature of any contact between the minor 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 minor shall be reviewed on a case-by-case basis, ''extended family'' for the purpose of the paragraph shall include, but not be limited to, the minor's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history, including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

(c) Whenever the court orders that a hearing pursuant to procedures described in this section be held, it shall order that 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, has exclusive responsibility for determining the adoptive placement and making all adoption-related decisions.

(d) If the court, by order of judgment declares the minor free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the minor referred to the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency or a licensed county adoption agency for adoptive placement by the agency. The order shall state that responsibility for custody of the minor shall be held jointly by the probation department and 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 or the licensed county adoption agency. The order shall also state that 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 or the licensed county adoption agency has exclusive responsibility for determining the adoptive placement and for making all adoption-related decisions. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted.

(e) The notice procedures for terminating parental rights for minors described by this section shall proceed exclusively pursuant to Section 366.23.

SEC. 14. Section 727.32 is added to the Welfare and Institutions Code, to read:

727.32. (a) In any case where a minor has been declared a ward of the juvenile court and has been in foster care for 15 of the most recent 22 months, the probation department shall follow the procedures described in Section 727.31 to terminate the parental rights of the minor's parents, unless the probation department has documented in the probation department file a compelling reason for determining that termination of the parental rights would not be in the minor's best interests, or the probation department has not provided the family with reasonable efforts necessary to achieve reunification. For purposes of this section, compelling reasons for not terminating parental rights are those described in subdivision (c) of Section 727.3.

(b) For the purposes of this section, 15 out of the 22 months shall be calculated from the ''date entered foster care,'' as defined in paragraph (4) of subdivision (d) of Section 727.4. When a minor experiences multiple exits from and entries into foster care during the 22-month period, the 15 months shall be calculated by adding together the total number of months the minor spent in foster care in the past 22 months. However, trial home visits and runaway episodes should not be included in calculating 15 months in foster care.

(c) If the probation department documented a compelling reason at the time of the permanency planning hearing, pursuant to subdivision (*l*) of Section 706.6, the probation department need not provide any additional documentation to comply with the requirements of this section.

(d) When the probation department sets a hearing pursuant to Section 727.31, it shall concurrently make efforts to identify an approved family for adoption, and follow the procedures described in subdivision (b) of Section 727.31.

SEC. 15. Section 727.4 of the Welfare and Institutions Code is amended to read:

727.4. (a) Notice of any hearing pursuant to Section 727, 727.2, or 727.3 shall be mailed by the probation officer to the minor, the minor's parent or guardian, any adult provider of care to the minor including, but

not limited to, foster parents, relative caregivers, preadoptive parents, community care facility, or foster family agency and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date of the hearing. The notice shall contain a statement regarding the nature of the status review or permanency planning hearing and any change in the custody or status of the minor being recommended by the probation department. The notice shall also include a statement informing the foster parents, relative caregivers, or preadoptive parents that he or she may attend all hearings or may submit any information he or she deems relevant to the court in writing. The foster parents, relative caregiver, and preadoptive parents are entitled to notice and opportunity to be heard but need not be made parties to the proceedings. Proof of notice shall be filed with the court.

(b) At least 10 calendar days prior to each status review and permanency planning hearing, after the hearing during which the court orders that the care, custody and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the probation officer shall file a social study report with the court, pursuant to the requirements listed in Section 706.5.

(c) The probation department shall inform the minor, the minor's parent or guardian, and all counsel of record that a copy of the social study prepared for the hearing will be available 10 days prior to the hearing and may be obtained from the probation officer.

(d) As used in Article 15 (commencing with Section 625) to Article 18 (commencing with Section 725), inclusive:

(1) ''Foster care'' means residential care provided in any of the settings described in Section 11402.

(2) ''At risk of entering foster care'' means that conditions within a minor's family may necessitate his or her entry into foster care unless those conditions are resolved.

(3) ''Preadoptive parent'' means a licensed foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency.

(4) ''Date of entry into foster care'' means the date that is 60 days after the date on which the minor was removed from his or her home, unless one of the exceptions below applies:

(A) If the minor is detained pending foster care placement, and remains detained for more than 60 days, then the date of entry into foster care means the date the court adjudges the minor a ward and orders the minor placed in foster care under the supervision of the probation officer.

(B) If, before the minor is placed in foster care, the minor is committed to a ranch, camp, school, or other institution pending placement, and remains in that facility for more than 60 days, then the ''date of entry into foster care'' is the date the minor is physically placed in foster care.

(C) If at the time the wardship petition was filed, the minor was a dependent of the juvenile court and in out-of-home placement, then the ''date of entry into foster care'' is the earlier of the date the juvenile court made a finding of abuse or neglect, or 60 days after the date on which the child was removed from his or her home.

(5) ''Reasonable efforts'' means:

(A) Efforts made to prevent or eliminate the need for removing the minor from the minor's home;

(B) Efforts to make it possible for the minor to return home, including, but not limited to, case management, counseling, parenting training, mentoring programs, vocational training, educational services, substance abuse treatment, transportation, and therapeutic day services; and

(C) Efforts to complete whatever steps are necessary to finalize a permanent plan for the minor.

(6) ''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,'' ''grand,'' or the spouse of any of these persons even if the marriage was terminated by death or dissolution.

(7) ''Hearing'' means a noticed proceeding with findings and orders that are made on a case-by-case basis, heard by either of the following:

(A) A judicial officer, in a courtroom, recorded by a court reporter.

(B) An administrative panel, provided that the hearing is a status review hearing and that the administrative panel meets the following conditions:

(i) The administrative review shall be open to participation by the minor and parents or legal guardians and all those persons entitled to notice under subdivision (a) of Section 727.4.

(ii) The minor and his or her parents or legal guardians receive proper notice as required in subdivision (a) of Section 727.4.

(iii) The administrative review panel is composed of persons appointed by the presiding judge of the juvenile court, the membership of which shall include at least one person who is not responsible for the case management of, or delivery of services to, the minor or the parents who are subject of the review.

(iv) The findings of the administrative review panel shall be submitted to the juvenile court for the court's approval and shall become part of the official court record.

SEC. 16. Section 728 of the Welfare and Institutions Code is amended to read:

728. (a) The juvenile court may terminate or modify a guardianship of the person of a minor previously established under the Probate Code, or appoint a coguardian or successor guardian of the person of the minor, if the minor is the subject of a petition filed under Section 300, 601, or 602. If the probation officer supervising the minor provides information to the court regarding the minor's present circumstances and makes a recommendation to the court regarding a motion to terminate or modify a guardianship established in any county under the Probate Code, or to appoint a coguardian or successor guardian, of the person of a minor who is before the juvenile court under a petition filed under Section 300, 601, or 602, the court shall order the appropriate county department, or the district attorney or county counsel, to file the recommended motion. The motion may also be made by the guardian or the minor's attorney. The hearing on the motion may be held simultaneously with any regularly scheduled hearing held in proceedings to declare the minor a dependent child or ward of the court, or at any subsequent hearing concerning the dependent child or ward. Notice requirements of Section 1511 of the Probate Code shall apply to the proceedings in juvenile court under this subdivision.

(b) If the juvenile court decides to terminate or modify a guardianship previously established under the Probate Code pursuant to subdivision (a), the juvenile court shall provide notice of that decision to the court in which the guardianship was originally established. The clerk of the superior court, upon receipt of the notice, shall file the notice with other documents and records of the pending proceeding and send by first-class mail a copy of the notice to all parties of record in the superior court.

(c) If, at any time during the period a minor under the age of 18 years is a ward of the juvenile court, the probation officer supervising the minor recommends to the court that the court establish a guardianship of the person of the minor and appoint a specific adult to act as guardian, or on the motion of the minor's attorney, or on the order of the court that a guardianship shall be established as the minor's permanent plan pursuant to paragraph (4) of subdivision (b) of Section 727.3, the court shall set a hearing to consider the recommendation or motion and shall order the clerk to notice the minor's parents and relatives as required in Section 1511 of the Probate Code. If the motion is not made by the minor's attorney, the court may appoint the district attorney or county counsel to prosecute the action.

(d) At the hearing described in subdivision (c), the court shall determine if the appointment of a guardian of the person of the minor appears necessary or convenient, and is consistent with the rehabilitation and protection of the minor and with public safety, and if the court so

determines, it shall appoint a guardian of the person of the minor and order that letters of guardianship issue pursuant to the standards and procedures specified in the Probate Code.

(e) Upon the appointment of a guardian pursuant to subdivision (d), the court may continue wardship and conditions of probation, or may terminate the wardship of the minor.

(f) Notwithstanding Section 1601 of the Probate Code, the proceedings to modify or terminate a guardianship granted under this section shall be held in the juvenile court unless the termination is due to the emancipation or adoption of the minor.

(g) The Judicial Council shall develop rules of court and adopt appropriate forms for the findings and orders under this section.

SEC. 17. 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.

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## CHAPTER 832

An act to add Section 1100.7 to the Public Contract Code, relating to public contracts.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 1100.7 is added to the Public Contract Code, to read:

1100.7. This code is the basis of contracts between most public entities in this state and their contractors and subcontractors. With regard to charter cities, this code applies in the absence of an express exemption or a city charter provision or ordinance that conflicts with the relevant provision of this code.

SEC. 2. The Legislature finds and declares that Section 1100.7 of the Public Contract Code, as added by this act, is declaratory of existing

law as set forth in the holding in Howard Contracting, Inc. v. G.A. MacDonald Construction Co. (1998) 71 Cal.App.4th 38.

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## CHAPTER 833

An act to amend Section 31720.7 of the Government Code, and to amend Sections 3212, 3212.6, 3212.8, and 3212.9 of the Labor Code, relating to medical conditions.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 31720.7 of the Government Code is amended to read:

31720.7. (a) If a safety member, a firefighter, a county probation officer, or a member in active law enforcement who has completed five years or more of service under a pension system established pursuant to Chapter 4 (commencing with Section 31900) or under a pension system established pursuant to Chapter 5 (commencing with Section 32200), or both, or under this retirement system, under the Public Employees' Retirement System, or under a retirement system established under this chapter in another county, develops a blood-borne infectious disease, the disease so developing or manifesting itself in those cases shall be presumed to arise out of, and in the course of, employment. The disease so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

(b) Any safety member, firefighter, county probation officer, or member active in law enforcement described in subdivision (a) permanently incapacitated for the performance of duty as a result of a blood-borne infectious disease shall receive a service-connected disability retirement.

(c) The presumption described in subdivision (a) is rebuttable by other evidence. Unless so rebutted, the board is bound to find in accordance with the presumption. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(d) ''Blood-borne infectious disease,'' for purposes of this section, means a disease caused by exposure to pathogenic microorganisms that

are present in human blood that can cause disease in humans, including, but not limited to, those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations.

(e) ''Member in active law enforcement,'' for purposes of this section, means members employed by a sheriff's office, by a police or fire department of a city, county, city and county, district, or by another public or municipal corporation or political subdivision or who are described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code or who are employed by any county forestry or firefighting department or unit, except any of those members whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement services or active firefighting services, such as stenographers, telephone operators, and other office workers, and includes a member engaged in active law enforcement who is not classified as a safety member.

SEC. 2. Section 3212 of the Labor Code is amended to read:

3212. In the case of members of a sheriff's office or the California Highway Patrol, district attorney's staff of inspectors and investigators or of police or fire departments of cities, counties, cities and counties, districts or other public or municipal corporations or political subdivisions, whether such members are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service such as stenographer, telephone operators, and other officeworkers, the term ''injury'' as used in this act includes hernia when any part of the hernia develops or manifests itself during a period while such member is in the service in such office, staff, division, department or unit, and in the case of members of such fire departments, except those whose principal duties are clerical, such as stenographers, telephone operators and other officeworkers, and in the case of county forestry or firefighting departments, except those whose principal duties are clerical, such as stenographers, telephone operators and other officeworkers, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting, and in the case of members of the warden service of the Wildlife Protection Branch of the Department of Fish and Game whose principal duties consist of active law enforcement service, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law

enforcement service such as stenographer, telephone operators, and other officeworkers, the term ''injury'' includes pneumonia and heart trouble which develops or manifests itself during a period while such member is in the service of such office, staff, department or unit. In the case of regular salaried county or city and county peace officers, the term ''injury'' also includes any hernia which manifests itself or develops during a period while the officer is in the service. The compensation which is awarded for such hernia, heart trouble or pneumonia shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

Such hernia, heart trouble or pneumonia so developing or manifesting itself in such cases shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. Such presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Such hernia, heart trouble or pneumonia so developing or manifesting itself in such cases shall in no case be attributed to any disease existing prior to such development or manifestation.

SEC. 3. Section 3212.6 of the Labor Code is amended to read:

3212.6. In the case of a member of a police department of a city or county, or a member of the sheriff's office of a county, or a member of the California Highway Patrol, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, or a prison or jail guard or correctional officer who is employed by a public agency, when that person is employed upon a regular, full-time salary, or in the case of members of fire departments of any city, county, or district, or other public or municipal corporations or political subdivisions, when those members are employed on a regular fully paid basis, and in the case of active firefighting members of the Department of Forestry and Fire Protection whose duties require firefighting and first-aid response services, or of any county forestry or firefighting department or unit, where those members are employed on a regular fully paid basis, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement, firefighting, or emergency first-aid response service such as stenographers, telephone operators, and other officeworkers, the term ''injury'' includes tuberculosis that develops or manifests itself during a period while that member is in the service of that department or office. The compensation that is awarded for the tuberculosis shall include full

hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The tuberculosis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

A public entity may require applicants for employment in firefighting positions who would be entitled to the benefits granted by this section to be tested for infection for tuberculosis.

SEC. 4. Section 3212.8 of the Labor Code is amended to read:

3212.8. (a) In the case of members of a sheriff's office, of police or fire departments of cities, counties, cities and counties, districts, or other public or municipal corporations or political subdivisions, or individuals described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, whether those persons are volunteer, partly paid, or fully paid, and in the case of active firefighting members of the Department of Forestry and Fire Protection, or of any county forestry or firefighting department or unit, whether voluntary, fully paid, or partly paid, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement service or active firefighting services, such as stenographers, telephone operators, and other office workers, the term ''injury'' as used in this division, includes a blood-borne infectious disease when any part of the blood-borne infectious disease develops or manifests itself during a period while that person is in the service of that office, staff, division, department, or unit. The compensation that is awarded for a blood-borne infectious disease shall include, but not be limited to, full hospital, surgical, medical treatment, disability indemnity, and death benefits, as provided by the workers' compensation laws of this state.

(b) The blood-borne infectious disease so developing or manifesting itself in those cases shall be presumed to arise out of and in the course of the employment or service. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. That presumption shall be extended to a person covered by subdivision (a) following termination of service for a period of three calendar months for each full year of service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(c) The blood-borne infectious disease so developing or manifesting itself in those cases shall in no case be attributed to any disease existing prior to that development or manifestation.

(d) For the purposes of this section, ''blood-borne infectious disease'' means a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations.

SEC. 5. Section 3212.9 of the Labor Code is amended to read:

3212.9. In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a member of the California Highway Patrol, or a county probation officer, or an inspector or investigator in a district attorney's office of any county whose principal duties consist of active law enforcement service, when that person is employed on a regular, full-time salary, or in the case of a member of a fire department of any city, county, or district, or other public or municipal corporation or political subdivision, or any county forestry or firefighting department or unit, when those members are employed on a regular full-time salary, excepting those whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement or firefighting, such as stenographers, telephone operators, and other officeworkers, the term ''injury'' includes meningitis that develops or manifests itself during a period while that person is in the service of that department, office, or unit. The compensation that is awarded for the meningitis shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The meningitis so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

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## CHAPTER 834

An act to add Section 3213.2 to the Labor Code, relating to workers' compensation.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 3213.2 is added to the Labor Code, to read:

3213.2. (a) In the case of a member of a police department of a city, county, or city and county, or a member of the sheriff's office of a county, or a peace officer employed by the Department of the California Highway Patrol, or a peace officer employed by the University of California, who has been employed for at least five years as a peace officer on a regular, full-time salary and has been required to wear a duty belt as a condition of employment, the term ''injury,'' as used in this division, includes lower back impairments. The compensation that is awarded for lower back impairments shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

(b) The lower back impairment so developing or manifesting itself in the peace officer shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a person following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

(c) For purposes of this section, ''duty belt'' means a belt used for the purpose of holding a gun, handcuffs, baton, and other items related to law enforcement.

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## CHAPTER 835

An act to add Section 3212.10 to the Labor Code, relating to workers' compensation.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 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) Many convicted criminals who are incarcerated or supervised at the state and local levels are persons who have engaged in patterns of high-risk behavior and carry diseases and levels of infection that greatly exceed those of the general population of the state.

(b) State correctional peace officers and probation officers are subjected to constant exposure to the diseases and illnesses of the convicted criminals that they directly supervise.

(c) The duties of state correctional peace officers and probation officers include daily, direct, and close supervision of these persons, and require physical intervention in the event of disturbances or emergencies. These actions involve contacts resulting in inadvertent and frequently deliberate transfer of bodily fluids such as saliva, urine, feces, blood, and other substances. These contacts facilitate the transmission of communicable diseases and illnesses.

(d) During the calendar year of 1999, 3,224 staff were assaulted by inmates and wards in California correctional facilities and 691 staff were assaulted by inmates at local probation facilities. Coupling these assaults with other incidental and direct contacts with the inmate and parolee population, correctional peace officers are placed at high risk for contracting communicable diseases and illnesses.

(e) For these reasons, it is incumbent upon the state to provide for the health and welfare of officers whose daily physical well-being is placed at risk in the normal course of their employment.

(f) Therefore, it is appropriate to amend workers' compensation law to presume that communicable and infectious diseases or illnesses, which manifest themselves in correctional peace officers and probation officers, were contracted during the course of their employment, and it is accordingly necessary to provide health, rehabilitative, and other benefits to the injured workers in an expeditious manner.

SEC. 2. Section 3212.10 is added to the Labor Code, to read:

3212.10. In the case of a peace officer of the Department of Corrections who has custodial or supervisory duties of inmates or parolees, or a peace officer of the Department of Youth Authority who has custodial or supervisory supervisory duties of wards or parolees, or a peace officer as defined in Section 830.5 of the Penal Code and employed by a local agency, the term ''injury'' as used in this division includes heart trouble, pneumonia, tuberculosis, and meningitis that develops or manifests itself during a period in which any peace officer covered under this section is in the service of the department or unit. The compensation that is awarded for that injury shall include full hospital, surgical, medical treatment, disability indemnity, and death benefits as provided by the provisions of this division.

The heart trouble, pneumonia, tuberculosis, and meningitis so developing or manifesting itself shall be presumed to arise out of and in the course of employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it. This presumption shall be extended to a member following termination of service for a period of

three calendar months for each full year of requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

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## CHAPTER 836

An act to add Sections 8247, 8248, 8249, and 8250 to the Government Code, relating to public employment.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 8247 is added to the Government Code, to read:

8247. It is hereby declared to be the public policy of the state to attempt to achieve an equitable relationship between the comparability of the value of work performed by persons in state service and the compensation and classification plans within the state system. To further this end, a bias-free job evaluation system needs to be developed for all jobs in state service, across job families to rank jobs in order, to set salaries, and to create career ladders for advancement according to the value of the work performed.

It is the intent of the Legislature that the provisions of Section 8248 shall not be self-executing and that the findings of the commission shall not be implemented unless further legislation specifically authorizes that these findings be implemented in whole or in part.

SEC. 2. Section 8248 is added to the Government Code, to read:

8248. The commission shall do all of the following:

(a) Evaluate the compensation and classification plans for state civil service and related employees and the employees of the University of California, Hastings College of the Law, and the California State University conferred under the Higher Education Employer-Employee Relations Act on the basis of objective, job-related criteria in order to advise the Legislature of the explicit worth or value of those services and positions.

(b) Determine where compensation and classification inequities exist based on comparability of the value of work, giving primary consideration to identifying and correcting inequities between female dominated and male dominated classes of employees in state service.

(c) Report, by January 1, 2003, to the Legislature and to the parties meeting and conferring pursuant to Sections 3517 and 3570 all findings

as may be required in order to implement the principles of equitable compensation and classification based on comparability of value of work as part of the state compensation and classification plans and negotiated agreements, including, but not limited to, factor values, comparative job ratings, gender makeup of all job classifications, present salary structures, policy recommendations, and annual cost estimates for the implementation of an equitable compensation program.

(d) This section shall not be implemented unless and until funds are appropriated by the Legislature in the annual Budget Act or another statute.

SEC. 3. Section 8249 is added to the Government Code, to read:

8249. With respect to its duties under Section 8248, the commission shall be an advisory commission only, and there shall be no right or obligation on the part of the state, or the parties meeting and conferring, to implement the findings of the commission without further legislation that specifically authorizes that the evaluations, determinations, and findings of the commission be implemented.

SEC. 4. Section 8250 is added to the Government Code, to read:

8250. (a) The commission shall hire staff or contract for those experts or technical and professional services as may be required for the completion of the study required by Section 8248. Staff hired pursuant to this section shall be hired in compliance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2). Contracts awarded pursuant to this section shall be in compliance with Section 19130.

(b) This section shall not be implemented unless and until funds are appropriated by the Legislature in the annual Budget Act or another statute.

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## CHAPTER 837

An act to add Article 5.7 (commencing with Section 8590) to Chapter 7 of Division 1 of Title 2 of the Government Code, relating to fire safety, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

I have signed Assembly Bill 70, which establishes a thermal imaging equipment program within the Office of Emergency Services and creates an advisory committee to develop specifications and information to facilitate the purchase of thermal imaging equipment at competitive rates. However, I am deleting Section 3, which appropriates fifty thousand dollars ($50,000) from the General Fund.

In signing this bill, I am directing the Office of Emergency Services to begin establishing the program within existing resources. State revenues have fallen $1.1 billion below projections in the first three months of this fiscal year alone. While I am strongly committed to protecting state public safety and firefighting efforts from budget reductions, I have no choice but to oppose additional General Fund spending.

GRAY DAVIS, Governor

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

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

(a) Firefighters every day risk their lives and should be equipped with the best available equipment that can reduce their risk of harm when fighting fires and increase the survival rate of fire victims.

(b) Thermal imaging technology and equipment now exist to increase firefighters' ability to work safely in a smoke-filled environment by allowing them to see and maneuver amidst smoke, locate the fire, and identify victims and other firefighters more quickly, thereby saving lives and money.

(c) Thermal imaging equipment is expensive, costing in the range of $18,000 to $25,000 per unit.

(d) A growing number of fire departments across the nation use thermal imaging equipment. The State of New Jersey has purchased a thermal imaging unit for each fire district in that state.

(e) It is the intent of the Legislature to create a state purchasing program to leverage the state's buying power to purchase thermal imaging equipment for firefighters throughout the State of California.

SEC. 2. Article 5.7 (commencing with Section 8590) is added to Chapter 7 of Division 1 of Title 2 of the Government Code, to read:

Article 5.7. Firefighting Thermal Imaging Equipment Act of 2001

8590. This article shall be known and may be cited as the Firefighting Thermal Imaging Equipment Act of 2001.

8590.1. As used in this article:

(a) ''Director'' means the Director of the Office of Emergency Services.

(b) ''Local agency'' means any city, county, city and county, fire district, special district, or joint powers agency that provides fire suppression services. ''Local agency'' also includes a fire company organized pursuant to Part 4 (commencing with Section 14825) of Division 12 of the Health and Safety Code.

(c) ''Office'' means the Office of Emergency Services.

(d) ''State agency'' means any state agency providing residential or institutional fire protection, including, but not limited to, the California Department of Forestry and Fire Protection.

8590.2. There is established in the office a thermal imaging equipment purchasing program under which the office shall acquire firefighting thermal imaging equipment on behalf of local and state agencies that are interested in obtaining this equipment.

8590.3. In administering the purchasing program, the director shall do all of the following:

(a) No later than 45 days after the effective date of this article, establish an advisory committee, which shall be comprised of representatives of organizations including, but not limited to, the California Fire Chiefs Association, the Fire Districts Association of California, the California Professional Firefighters, the CDF Firefighters, and the California State Firefighters Association, Inc. The committee shall meet no later than 30 days after all members are appointed.

(b) Consult with the advisory committee regarding equipment specifications and other matters relating to the acquisition of thermal imaging equipment, and require the advisory committee to formulate specifications no later than 120 days after its initial meeting.

(c) Notify all local and state agencies about the purchasing program, including the opportunity to purchase additional units at the contract price, and determine whether those agencies are interested in obtaining thermal imaging equipment.

(d) Purchase thermal imaging equipment at the lowest possible price from a reliable vendor that meets specified requirements. It is the intent of the Legislature that the director enter into a multiyear contract for this purpose no later than 180 days after the committee formulates specifications pursuant to subdivision (b).

(e) Include a provision in the vendor contract allowing any local or state agency to purchase additional units directly from the vendor at the contract price.

(f) Any local agency that elects to participate in the thermal imaging equipment purchasing program shall pay one-half of the contract price for each piece of equipment purchased on its behalf by the state.

8590.4. (a) The director shall seek funding for the program from the private sector, grant programs, and other appropriate sources.

(b) The director, after consultation with the advisory commission, shall distribute equipment purchased under the program in order to maximize its utilization by firefighters based on consideration of the following factors:

(1) Ability to share or move the equipment to fire locations.

(2) Availability of existing thermal imaging equipment.

(3) Geography.

(4) Need based on frequency of fires.

SEC. 3. The sum of fifty thousand dollars ($50,000) is hereby appropriated from the General Fund to the Office of Emergency Services for the purpose of funding the thermal imaging equipment purchasing program established pursuant to this act.

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:

To ensure that firefighters throughout California are equipped with the best available equipment that can reduce their risk of harm when fighting fires and increase the survival rate of fire victims as soon as possible, it is necessary for this act to take effect immediately.

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## CHAPTER 838

An act to amend Sections 11375 and 11377 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 11375 of the Health and Safety Code is amended to read:

11375. (a) As to the substances specified in subdivision (c), this section, and not Sections 11377, 11378, 11379, and 11380, shall apply.

(b) (1) Every person who possesses for sale, or who sells, any substance specified in subdivision (c) shall be punished by imprisonment in the county jail for a period of not more than one year or state prison.

(2) Every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

(c) This section shall apply to any material, compound, mixture, or preparation containing any of the following substances:

(1) Chlordiazepoxide.
(2) Clonazepam.
(3) Clorazepate.
(4) Diazepam.
(5) Flurazepam.
(6) Lorazepam.

(7) Mebutamate.
(8) Oxazepam.
(9) Prazepam.
(10) Temazepam.
(11) Halazepam.
(12) Alprazolam.
(13) Propoxyphene.
(14) Diethylpropion.
(15) Phentermine.
(16) Pemoline.
(17) Triazolam.

SEC. 2. Section 11375 of the Health and Safety Code, as amended by Chapter 616 of the Statutes of 1992, is amended to read:

11375. (a) As to the substances specified in subdivision (c), this section, and not Sections 11377, 11378, 11379, and 11380, shall apply.

(b) (1) Every person who possesses for sale, or who sells, any substance specified in subdivision (c) shall be punished by imprisonment in the county jail for a period of not more than one year or state prison.

(2) Every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

(c) This section shall apply to any material, compound, mixture, or preparation containing any of the following substances:

(1) Chlordiazepoxide.
(2) Clonazepam.
(3) Clorazepate.
(4) Diazepam.
(5) Flurazepam.
(6) Lorazepam.
(7) Mebutamate.
(8) Oxazepam.
(9) Prazepam.
(10) Temazepam.
(11) Halazepam.
(12) Alprazolam.
(13) Propoxyphene.
(14) Diethylpropion.
(15) Phentermine.
(16) Pemoline.
(17) Fenfluramine.
(18) Triazolam.

SEC. 3. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (4) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison.

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of such a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 3.5. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison.

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of such a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 4. Section 3.5 of this bill incorporates amendments to Section 11377 of the Health and Safety Code proposed by both this bill and AB 258. 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 11377 of the Health and Code, and (3) this bill is enacted after AB 258, in which case Section 3 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 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.

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## CHAPTER 839

An act to amend Sections 45113 and 88013 of the Education Code, relating to public school employees.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 45113 of the Education Code is amended to read:

45113. (a) The governing board of a school district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby such employees are designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed one year.

(b) Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

(c) The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him, a statement of his right to a hearing on such charges, and the time within which such hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.

(d) No disciplinary action shall be taken for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two years preceding the date of the filing of the notice of cause unless such cause was concealed or not disclosed by such employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.

(e) Nothing in this section shall be construed to prohibit the governing board, pursuant to the terms of an agreement with an employee organization under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, from delegating its authority to determine whether sufficient cause exists for disciplinary action against classified employees, excluding peace officers as defined in Section 830.32 of the Penal Code, to an impartial third-party hearing officer. However, the governing board shall retain authority to review the determination under the standards set forth in Section 1286.2 of the Code of Civil Procedure.

(f) This section shall apply only to districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240) of this chapter.

SEC. 1.5. Section 45113 of the Education Code is amended to read:

45113. (a) The governing board of a school district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to

employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed one year. A permanent employee who accepts a promotion and fails to complete the probationary period for that promotional position, shall be employed in the classification from which he or she was promoted.

(b) Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

(c) The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.

(d) No disciplinary action shall be taken for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two years preceding the date of the filing of the notice of cause unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.

(e) Nothing in this section shall be construed to prohibit the governing board, pursuant to the terms of an agreement with an employee organization under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, from delegating its authority to determine whether sufficient cause exists for disciplinary action against classified employees, excluding peace officers as defined in Section 830.32 of the Penal Code, to an impartial third-party hearing officer. However, the governing board shall retain authority to review the determination under the standards set forth in Section 1286.2 of the Code of Civil Procedure.

(f) This section shall apply only to districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240) of this chapter.

SEC. 2. Section 88013 of the Education Code is amended to read:

88013. (a) The governing board of a community college district shall prescribe written rules and regulations, governing the personnel

management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are, except as provided in Section 72411, designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed one year.

(b) Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

(c) The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.

(d) No disciplinary action shall be taken for any cause that arose prior to the employee's becoming permanent, or for any cause that arose more than two years preceding the date of the filing of the notice of cause, unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.

(e) Nothing in this section shall be construed to prohibit the governing board, pursuant to the terms of an agreement with an employee organization under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, from delegating its authority to determine whether sufficient cause exists for disciplinary action against classified employees, excluding peace officers as defined in Section 830.32 of the Penal Code, to an impartial third-party hearing officer. However, the governing board shall retain authority to review the determination under the standards set forth in Section 1286.2 of the Code of Civil Procedure.

(f) This section shall apply only to districts not incorporating the merit system as outlined in Article 3 (commencing with Section 88060).

SEC. 2.5. Section 88013 of the Education Code is amended to read:

88013. (a) The governing board of a community college district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those

concerned with the administration of this section, whereby these employees are, except as provided in Section 72411, designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed one year. A permanent employee who accepts a promotion and fails to complete the probationary period for that promotional classification, shall be employed in the position from which he or she was promoted.

(b) Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

(c) The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.

(d) No disciplinary action shall be taken for any cause that arose prior to the employee's becoming permanent, or for any cause that arose more than two years preceding the date of the filing of the notice of cause, unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.

(e) Nothing in this section shall be construed to prohibit the governing board, pursuant to the terms of an agreement with an employee organization under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, from delegating its authority to determine whether sufficient cause exists for disciplinary action against classified employees, excluding peace officers as defined in Section 830.32 of the Penal Code, to an impartial third party hearing officer. However, the governing board shall retain authority to review the determination under the standards set forth in Section 1286.2 of the Code of Civil Procedure.

(f) This section shall apply only to districts not incorporating the merit system as outlined in Article 3 (commencing with Section 88060).

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 45113 of the Education Code proposed by both this bill and AB 365. 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

45113 of the Education Code, and (3) this bill is enacted after AB 365, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 88013 of the Education Code proposed by both this bill and AB 365. 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 88013 of the Education Code, and (3) this bill is enacted after AB 365, in which case Section 2 of this bill shall not become operative.

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## CHAPTER 840

An act to amend Sections 24411, 24412, 24415, 24416, and 24417 of the Education Code, relating to state teachers' retirement.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 24411 of the Education Code is amended to read:

24411. (a) (1) Annual cost-of-living adjustments for retired members, disabled members, and beneficiaries in excess of the 2-percent adjustment authorized by Section 22140 may be included as a General Fund appropriation in the annual Budget Act. In the annual budget submitted to the Legislature, the Governor shall include a budget item equal to 5 percent of the average annualized statewide increase in payroll for certificated personnel over the three previous school years among school districts, county offices of education, and community college districts.

(2) The amount submitted in the annual Budget Act pursuant to this section shall be considered as part of the overall budget allocations to the public schools and community colleges.

(b) The annual appropriation shall be made to the system on July 1, and shall be placed in a segregated account called the Retirees' Purchasing Power Protection Account. The proceeds of that account are continuously appropriated and shall be distributed annually in quarterly payments commencing on September 1 to retired members, disabled members, and beneficiaries under the Defined Benefit Program as follows:

(1) The proceeds shall be allocated among those retired members, disabled members, and beneficiaries under the Defined Benefit Program whose allowances, after applying the 2-percent adjustment authorized

by Section 22140, have the lowest purchasing power percentage, based on the amount that would be paid had the original allowance been increased by the increases in the index then being used by the Department of Finance to measure changes in the cost of living, increasing those allowances to a common minimum purchasing power level. In any year in which the purchasing power of the allowances of all retired members, disabled members, and beneficiaries under the Defined Benefit Program equals not less than 80 percent and additional funds remain from the allocation authorized by this section, those funds shall be allocated by the board to general accounts to reduce the unfunded actuarial liability of the fund.

(2) The board may deduct from the annual appropriation an amount necessary for administrative expenses to implement this section.

(c) The board shall inform each recipient of an allowance under subdivision (b) that the increases are not cumulative, are not part of the base allowance, and shall be available only as appropriated annually in the Budget Act.

(d) The adjustments authorized by this section shall not be included in the base allowance for purposes of calculating the 2-percent adjustment authorized by Section 22140.

(e) This section shall not be operative in any fiscal year during which, as determined by the board, distributions provided for by Section 24415 are being made.

SEC. 2. Section 24412 of the Education Code is amended to read:

24412. (a) The annual revenues deposited to the Teachers' Retirement Fund pursuant to Section 6217.5 of the Public Resources Code are continuously appropriated without regard to fiscal year for the purposes of this section and shall be distributed annually in quarterly supplemental payments commencing on September 1 of each year to retired members, disabled members, and beneficiaries under the Defined Benefit Program. The amount available for distribution in any year shall be the income for that year from the sale or use of school lands and lieu lands, as estimated by the State Lands Commission prior to the beginning of the fiscal year, adjusted by the difference between the estimated and actual income for the preceding fiscal year. The board shall deduct from the revenues an amount necessary for administrative expenses to implement this section.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107, whose allowances under the Defined Benefit Program, after sequentially applying the annual improvement factor as defined in Section 22140 and the annual supplemental payment as specified in Section 24411, if any, are below 80 percent of the original purchasing power. The purchasing power calculation for each individual

allowance shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of retirement and June of the fiscal year preceding the fiscal year of the distribution. The allocation shall provide a pro rata share of the amount needed to restore the allowance payable, after sequential application of the current year annual improvement factor and the supplemental payment under Section 24411, to 80 percent of the original purchasing power.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) In any year that the net revenues from school lands and lieu lands is greater than that needed to adjust the allowances of all retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107, under the Defined Benefit Program to 80 percent of the original purchasing power, the net revenues in excess of that needed for distribution shall be used by the board to reduce the unfunded actuarial obligation of the fund, if any.

(e) The board shall inform each recipient of supplemental payments under this section that the increases are not cumulative and are not part of the base allowance.

SEC. 3. Section 24415 of the Education Code is amended to read:

24415. (a) The proceeds of the Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments commencing on September 1, 1990, to retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 80 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Section 24412, and excluding those provided pursuant to Sections 24410.5, 24410.6, and 24410.7.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107, whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22140 and 22141, and the annual supplemental payment as specified in Section 24412, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of retirement and June of the fiscal year preceding the fiscal year of distribution. In any year in which the purchasing power of the allowances of all retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107, equals not less than 80 percent and additional funds remain from the allocation authorized by

this section, those funds shall remain in the Supplemental Benefit Maintenance Account for allocation in future years.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The increases provided by subdivision (b) are not cumulative, not part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The adjustments authorized by this section are vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Sections 22140 and 22141.

(f) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Section 24410.5 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 80 percent of the change in the All Urban California Consumer Price Index between January 2000 and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Section 24410.5.

(g) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Sections 24410.6 and 24410.7 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 80 percent of the change in the All Urban California Consumer Price Index between January 2001 and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Sections 24410.6 and 24410.7.

SEC. 4. Section 24416 of the Education Code is amended to read:

24416. (a) If the board determines by June 30 of the then current fiscal year that the Supplemental Benefit Maintenance Account will not have sufficient funds to provide purchasing power of up to 80 percent for the subsequent fiscal year, the board, for that year, may do either, or a combination of the following:

(1) Increase the employer contribution rate commencing in the next fiscal year by an amount that would provide sufficient funds for no more than the estimated difference between the funds in the Supplemental Benefit Maintenance Account and the amount needed to pay the benefit level specified by the board, provided the benefit level is no more than

80 percent. Notwithstanding any other provision of this part, the increase in the employer contribution rate shall only become operative if the increase is approved or authorized in the Budget Act.

(2) Reduce the supplemental benefit payment for the subsequent fiscal year to the amount that can be funded by the available funds in the Supplemental Benefit Maintenance Account.

(b) If the board finds that there is no unfunded obligation, as determined by the board's professional consulting actuary and affirmed by the Director of Finance, then in addition to the authority pursuant to subdivision (a), the board may transfer to an auxiliary Supplemental Benefit Maintenance Account, from any funds that are in excess of the amount needed to fund fully the benefits for which the Teachers' Retirement Fund is liable, an amount that would provide sufficient funds for no more than the estimated difference between the funds in the Supplemental Benefit Maintenance Account and the amount needed to pay the benefit level specified by the board, provided the benefit level is no more than 80 percent.

(c) If the board increases the employer contribution rate pursuant to paragraph (1) of subdivision (a), the increase between the current fiscal year contribution rate and the contribution rate in the next fiscal year, shall not exceed one-quarter of 1 percent of the creditable compensation upon which contributions are based.

SEC. 5. Section 24417 of the Education Code is amended to read:

24417. (a) The proceeds of an auxiliary Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments, commencing when funds in the Supplemental Benefit Maintenance Account are insufficient to support 80 percent, to retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 80 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Sections 24412 and 24415, and excluding those provided pursuant to Sections 24410.5, 24410.6, and 24410.7.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries, as defined in subdivision (a) of Section 22107, whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22140 and 22141, and the annual supplemental payment as specified in Sections 24412 and 24415, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price

Index between June of the calendar year of the benefit effective date and June of the fiscal year preceding the fiscal year of distribution.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The increases provided by subdivision (b) are not cumulative, nor part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account and the auxiliary Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The distributions authorized by this section are vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Sections 22140 and 22141.

(f) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Section 24410.5 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 80 percent of the change in the All Urban California Consumer Price Index between January 2000 and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Section 24410.5.

(g) Notwithstanding subdivision (b), for purposes of restoring the purchasing power of benefits provided pursuant to Sections 24410.6 and 24410.7 for members and beneficiaries receiving benefits pursuant to subdivision (b), the purchasing power calculation shall be based on 80 percent of the change in the All Urban California Consumer Price Index between January 2001 and June of the fiscal year preceding the fiscal year of distribution, after the application of increases authorized by Section 24412 that are made to the allowances provided pursuant to Sections 24410.6 and 24410.7.

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## CHAPTER 841

An act to amend Sections 11054, 11055, 11056, 11100, 11377, 11378, 11379, 11380, and 11382 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 11054 of the Health and Safety Code is amended to read:

11054. (a) The controlled substances listed in this section are included in Schedule I.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol.
(2) Allylprodine.
(3) Alphacetylmethadol (except levoalphacetylmethadol, also known as levo-alpha- acetylmethadol, levomethadyl acetate, or LAAM).
(4) Alphameprodine.
(5) Alphamethadol.
(6) Benzethidine.
(7) Betacetylmethadol.
(8) Betameprodine.
(9) Betamethadol.
(10) Betaprodine.
(11) Clonitazene.
(12) Dextromoramide.
(13) Diampromide.
(14) Diethylthiambutene.
(15) Difenoxin.
(16) Dimenoxadol.
(17) Dimepheptanol.
(18) Dimethylthiambutene.
(19) Dioxaphetyl butyrate.
(20) Dipipanone.
(21) Ethylmethylthiambutene.
(22) Etonitazene.
(23) Etoxeridine.
(24) Furethidine.
(25) Hydroxypethidine.
(26) Ketobemidone.
(27) Levomoramide.
(28) Levophenacylmorphan.
(29) Morpheridine.
(30) Noracymethadol.
(31) Norlevorphanol.

(32) Normethadone.
(33) Norpipanone.
(34) Phenadoxone.
(35) Phenampromide.
(36) Phenomorphan.
(37) Phenoperidine.
(38) Piritramide.
(39) Proheptazine.
(40) Properidine.
(41) Propiram.
(42) Racemoramide.
(43) Tilidine.
(44) Trimeperidine.
(45) Any substance which contains any quantity of acetylfentanyl (N-[1-phenethyl-4-piperidinyl] acetanilide) or a derivative thereof.
(46) Any substance which contains any quantity of the thiophene analog of acetylfentanyl (N-[1-[2-(2-thienyl)ethyl]-4-piperidinyl] acetanilide) or a derivative thereof.
(47) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
(48) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).
(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Acetorphine.
(2) Acetyldihydrocodeine.
(3) Benzylmorphine.
(4) Codeine methylbromide.
(5) Codeine-N-Oxide.
(6) Cyprenorphine.
(7) Desomorphine.
(8) Dihydromorphine.
(9) Drotebanol.
(10) Etorphine (except hydrochloride salt).
(11) Heroin.
(12) Hydromorphinol.
(13) Methyldesorphine.
(14) Methyldihydromorphine.
(15) Morphine methylbromide.
(16) Morphine methylsulfonate.
(17) Morphine-N-Oxide.
(18) Myrophine.
(19) Nicocodeine.

(20) Nicomorphine.
(21) Normorphine.
(22) Pholcodine.
(23) Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subdivision only, the term ''isomer'' includes the optical, position, and geometric isomers):

(1) 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA.

(2) 2,5-dimethoxyamphetamine—Some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.

(3) 4-methoxyamphetamine—Some trade or other names: 4-methoxy-alpha-methylphenethylamine, paramethoxyamphetamine, PMA.

(4) 5-methoxy-3,4-methylenedioxy-amphetamine.

(5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; ''DOM''; and ''STP.''

(6) 3,4-methylenedioxy amphetamine.

(7) 3,4,5-trimethoxy amphetamine.

(8) Bufotenine—Some trade or other names: 3-(beta-dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserolonin, 5-hydroxy-N,N-dimethyltryptamine; mappine.

(9) Diethyltryptamine—Some trade or other names: N,N-Diethyltryptamine; DET.

(10) Dimethyltryptamine—Some trade or other names: DMT.

(11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta, 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.

(12) Lysergic acid diethylamide.

(13) Marijuana.

(14) Mescaline.

(15) Peyote—Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of

such plant, its seeds or extracts (interprets 21 U.S.C. Sec. 812(c), Schedule 1(c)(12)).

(16) N-ethyl-3-piperidyl benzilate.

(17) N-methyl-3-piperidyl benzilate.

(18) Psilocybin.

(19) Psilocyn.

(20) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered).

(21) Ethylamine analog of phencyclidine—Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

(22) Pyrrolidine analog of phencyclidine—Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.

(23) Thiophene analog of phencyclidine—Some trade or other names: 1-[1-(2 thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone.

(2) Methaqualone.

(3) Gamma hydroxybutyric acid (also known by other names such as GHB; gamma hydroxy butyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate), including its immediate precursors, isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, including, but not limited to, gammabutyrolactone, for which an application has not been approved under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355).

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any

quantity of the following substances having a stimulant effect on the central nervous system, including its isomers:

(1) Cocaine base.

(2) Fenethylline, including its salts.

(3) N-Ethylamphetamine, including its salts.

SEC. 2. Section 11055 of the Health and Safety Code is amended to read:

11055. (a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium, opiate, and any salt, compound, derivative, or preparation of opium or opiate, with the exception of naloxone hydrochloride (N-allyl-14-hydroxy-nordihydromorphinone hydrochloride), but including the following:

(A) Raw opium.

(B) Opium extracts.

(C) Opium fluid extracts.

(D) Powdered opium.

(E) Granulated opium.

(F) Tincture of opium.

(G) Apomorphine.

(H) Codeine.

(I) Ethylmorphine.

(J) Hydrocodone.

(K) Hydromorphone.

(L) Metopon.

(M) Morphine.

(N) Oxycodone.

(O) Oxymorphone.

(P) Thebaine.

(2) Any salt, compound, isomer, or derivative, whether natural or synthetic, of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy).

(6) Cocaine, except as specified in Section 11054.

(7) Ecgonine, whether natural or synthetic, or any salt, isomer, derivative, or preparation thereof.

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(1) Alfentanyl.

(2) Alphaprodine.

(3) Anileridine.

(4) Bezitramide.

(5) Bulk dextropropoxyphene (nondosage forms).

(6) Dihydrocodeine.

(7) Diphenoxylate.

(8) Fentanyl.

(9) Isomethadone.

(10) Levoalphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM. This substance is authorized for the treatment of narcotic addicts under federal law (see Part 291 (commencing with Section 291.501) and Part 1308 (commencing with Section 1308.01) of Title 21 of the Code of Federal Regulations).

(11) Levomethorphan.

(12) Levorphanol.

(13) Metazocine.

(14) Methadone.

(15) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.

(16) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.

(17) Pethidine (meperidine).

(18) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.

(19) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.

(20) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

(21) Phenazocine.

(22) Piminodine.

(23) Racemethorphan.

(24) Racemorphan.

(25) Sufentanyl.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

(2) Methamphetamine, its salts, isomers, and salts of its isomers.

(3) Dimethylamphetamine (N,N-dimethylamphetamine), its salts, isomers, and salts of its isomers.

(4) N-Ethylmethamphetamine (N-ethyl, N-methylamphetamine), its salts, isomers, and salts of its isomers.

(5) Phenmetrazine and its salts.

(6) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital.

(2) Pentobarbital.

(3) Phencyclidines, including the following:

(A) 1-(1-phenylcyclohexyl) piperidine (PCP).

(B) 1-(1-phenylcyclohexyl) morpholine (PCM).

(C) Any analog of phencyclidine which is added by the Attorney General by regulation pursuant to this paragraph.

The Attorney General, or his or her designee, may, by rule or regulation, add additional analogs of phencyclidine to those enumerated in this paragraph after notice, posting, and hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Attorney General shall, in the calendar year of the regular session of the Legislature in which the rule or regulation is adopted, submit a draft of a proposed bill to each house of the Legislature which would incorporate the analogs into this code. No rule or regulation shall remain in effect beyond January 1 after the calendar year of the regular session in which the draft of the proposed bill is submitted to each house. However, if the draft of the proposed bill is submitted during a recess of the Legislature exceeding 45 calendar days, the rule or regulation shall be effective until January 1 after the next calendar year.

(4) Secobarbital.

(5) Glutethimide.

(f) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(A) Phenylacetone. Some trade or other names: phenyl-2 propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(A) 1-phenylcyclohexylamine.

(B) 1-piperidinocyclohexane carbonitrile (PCC).

SEC. 3. Section 11056 of the Health and Safety Code is amended to read:

11056. (a) The controlled substances listed in this section are included in Schedule III.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of those isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under Section 1308.32 of Title 21 of the Code of Federal Regulations, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(2) Benzphetamine.

(3) Chlorphentermine.

(4) Clortermine.

(5) Mazindol.

(6) Phendimetrazine.

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture, or preparation containing any of the following:

(A) Amobarbital

(B) Secobarbital

(C) Pentobarbital

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing any of the following:

(A) Amobarbital
(B) Secobarbital
(C) Pentobarbital
or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing only as a suppository.

(3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

(4) Chlorhexadol.

(5) Lysergic acid.

(6) Lysergic acid amide.

(7) Methyprylon.

(8) Sulfondiethylmethane.

(9) Sulfonethylmethane.

(10) Sulfonmethane.

(11) Gamma hydroxybutyric acid, and its salts, isomers and salts of isomers, contained in a drug product for which an application has been approved under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 355).

(d) Nalorphine.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts. Additionally, oral liquid preparations of dihydrocodeinone containing the above specified amounts may not contain as its nonnarcotic ingredients two or more antihistamines in combination with each other.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Anabolic steroids and chorionic gonadotropin. Any material, compound, mixture, or preparation containing chorionic gonadotropin or an anabolic steroid (excluding anabolic steroid products listed in the ''Table of Exempt Anabolic Steroid Products'' (Section 1308.34 of Title 21 of the Code of Federal Regulations), as exempt from the federal Controlled Substances Act (Section 801 and following of Title 21 of the United States Code)), including, but not limited to, the following:

(1) Androisoxazole.
(2) Androstenediol.
(3) Bolandiol.
(4) Bolasterone.
(5) Boldenone.
(6) Chlormethandienone.
(7) Clostebol.
(8) Dihydromesterone.
(9) Ethylestrenol.
(10) Fluoxymesterone.
(11) Formyldienolone.
(12) 4-Hydroxy-19-nortestosterone.
(13) Mesterolone.
(14) Methandriol.
(15) Methandrostenolone.
(16) Methenolone.
(17) 17-Methyltestosterone.
(18) Methyltrienolone.
(19) Nandrolone.
(20) Norbolethone.
(21) Norethandrolone.
(22) Normethandrolone.
(23) Oxandrolone.
(24) Oxymestrone.
(25) Oxymetholone.
(26) Quinbolone.
(27) Stanolone.
(28) Stanozolol.

(29) Stenbolone.
(30) Testosterone.
(31) Trenbolone.
(32) Chorionic Gonadotropin (HGC).

(g) Ketamine. Any material, compound, mixture, or preparation containing ketamine.

(h) Hallucinogenic substances. Any of the following hallucinogenic substances: dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration.

SEC. 4. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise furnishes any of the following substances to any person or business entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:

(1) Phenyl-2-propanone.
(2) Methylamine.
(3) Ethylamine.
(4) D-lysergic acid.
(5) Ergotamine tartrate.
(6) Diethyl malonate.
(7) Malonic acid.
(8) Ethyl malonate.
(9) Barbituric acid.
(10) Piperidine.
(11) N-acetylanthranilic acid.
(12) Pyrrolidine.
(13) Phenylacetic acid.
(14) Anthranilic acid.
(15) Morpholine.
(16) Ephedrine.
(17) Pseudoephedrine.
(18) Norpseudoephedrine.
(19) Phenylpropanolamine.
(20) Propionic anhydride.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionylchloride.
(25) Benzyl cyanide.
(26) Ergonovine maleate.
(27) N-methylephedrine.

(28) N-ethylephedrine.
(29) N-methylpseudoephedrine.
(30) N-ethylpseudoephedrine.
(31) Chloroephedrine.
(32) Chloropseudoephedrine.
(33) Hydriodic acid.
(34) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number (96-48-0).
(35) 1,4-butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol with Chemical Abstract Service number (110-63-4).
(36) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).
(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.
(c) (1) Any manufacturer, wholesaler, retailer, or other person in this state, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to any person or business entity in this state or any other state, shall require (A) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (B) proper identification from the purchaser. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.
(2) For the purposes of this subdivision, ''proper identification'' for in-state or out-of-state purchasers includes a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser, or individual representing the purchasing business entity, which contains a photograph of the purchaser or purchasing individual, and includes the current domicile or mailing address of the

purchaser or purchasing individual, other than a post office box number. ''Proper identification'' also includes the motor vehicle license number of the motor vehicle used by the purchaser or purchasing individual at the time of transfer or the name of the common carrier and the name and valid motor vehicle operator license number of the driver of the common carrier, and the signature of the purchaser, purchasing individual, or driver of the common carrier. The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature as a witness to the signature and identification of the purchaser, purchasing individual, or driver of the common carrier.

(d) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. However, the Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that the following exist:

(1) A pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances.

(2) The recipient has established a record of utilization of the substance or substances for lawful purposes.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer licensed by the State Department of Health Services or wholesaler licensed by the California State Board of Pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, veterinarian, or retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) (A) Any sale, transfer, furnishing, or receipt of any drug which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or

regulations adopted thereunder. However, this section shall apply to preparations in solid or liquid dosage form, except pediatric liquid forms, as defined, containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine where the individual transaction involves more than three packages or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement, unless otherwise reinstated pursuant to subdivision (d) or (e) of Section 814 of Title 21 of the United States Code as an exempt product.

(5) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both the fine and imprisonment.

(g) (1) Except as otherwise provided in subparagraph (A) of paragraph (4) of subdivision (e), it is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) Except as otherwise provided in subparagraph (A) of paragraph (4) of subdivision (e), it is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, or (ii) knowingly sell more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, other than pediatric liquids as defined. Except as otherwise provided in this section, the three package per transaction limitation or nine gram per transaction limitation imposed by this paragraph shall apply to any product that is

lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.

(4) A violation of this subdivision is a misdemeanor.

(h) For the purposes of this article, the following terms have the following meanings:

(1) ''Drug store'' is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) ''General merchandise store'' is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) ''Grocery store'' is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) ''Pediatric liquid'' means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of phenylpropanolamine or pseudoephedrine per five milliliters of liquid product, except for liquid products primarily intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.

(5) ''Retail distributor'' means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. ''Retail distributor'' includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

(6) ''Sale for personal use'' means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in paragraph (3) of subdivision (g). ''Sale for personal use'' also includes the sale of

those products to employers to be dispensed to employees from first-aid kits or medicine chests.

(i) It is the intent of the Legislature that this section shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

SEC. 5. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison.

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of such a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 5.5. Section 11377 of the Health and Safety Code is amended to read:

11377. (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13),

(14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison.

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been convicted of such a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

SEC. 6. Section 11378 of the Health and Safety Code is amended to read:

11378. Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055, shall be punished by imprisonment in the state prison.

SEC. 7. Section 11379 of the Health and Safety Code is amended to read:

11379. (a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled

substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in the state prison for a period of two, three, or four years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment in the state prison for three, six, or nine years.

SEC. 8. Section 11380 of the Health and Safety Code is amended to read:

11380. (a) Every person 18 years of age or over who violates any provision of this chapter involving controlled substances which are (1) classified in Schedule III, IV, or V and which are not narcotic drugs or (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, specified in paragraph (2) or (3) or subdivision (f) of Section 11054, or specified in subdivision (d), (e), or (f) of Section 11055, by the use of a minor as agent, who solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this article involving those controlled substances or who unlawfully furnishes, offers to furnish, or attempts to furnish those controlled substances to a minor shall be punished by imprisonment in the state prison for a period of three, six, or nine years.

(b) Nothing in this section applies to a registered pharmacist furnishing controlled substances pursuant to a prescription.

SEC. 9. Section 11382 of the Health and Safety Code is amended to read:

11382. Every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, or (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, or specified in subdivision (d), (e), or (f) of Section 11055, to any person, or offers, arranges, or negotiates to have any such controlled substance unlawfully

sold, delivered, transported, furnished, administered, or given to any person and then sells, delivers, furnishes, transports, administers, or gives, or offers, or arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of any such controlled substance shall be punished by imprisonment in the county jail for not more than one year, or in the state prison.

SEC. 10. Section 5.5 of this bill incorporates amendments to Section 11377 of the Health and Safety Code proposed by both this bill and AB 98. 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 11377 of the Health and Safety Code, and (3) this bill is enacted after AB 98, in which case Section 5 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.

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## CHAPTER 842

An act to amend Sections 123302 and 123320 of, and to add and repeal Section 123296 of, the Health and Safety Code, relating to maternal and child health.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 123296 is added to the Health and Safety Code, to read:

123296. (a) Nutrition coupons shall be redeemable by recipients at any authorized retail food vendor.

(b) On or before July 1, 2004, the department shall submit a report to the appropriate committees of the Legislature on the impact of the implementation of this section, including an assessment of the impact of this section on fraud and the integrity of the program.

(c) This section shall become operative July 1, 2002.

(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. Section 123302 of the Health and Safety Code is amended to read:

123302. (a) (1) Notwithstanding any other provision of law, the department may design, implement, and fund an electronic benefits transfer (EBT) system for the California Special Supplemental Food Program for Women, Infants, and Children. Sections 10066, 10067, and 10068 of, and subdivision (j) of Section 10072 of, the Welfare and Institutions Code, shall apply to the administration of this section.

(2) The department may not implement any EBT system authorized by this section until the department completes a feasibility study, and funding for the system is provided in the annual Budget Act.

(b) The department shall seek the advice of the Electronic Benefits Transfer Committee, created by Section 10067 of the Welfare and Institutions Code, in implementing this section, and shall obtain the approval of the United States Department of Agriculture, which is the federal governing agency, prior to the establishment of any EBT system.

(c) The department shall develop a plan to determine the feasibility of implementing an EBT system for the California Special Supplemental Food Program for Women, Infants, and Children by January 1, 2003, and shall report its findings to the Legislature by July 1, 2003.

SEC. 3. Section 123320 of the Health and Safety Code is amended to read:

123320. (a) The department shall inform the retail food vendors of, and include in the written agreement with the vendors, guidelines consistent with Section 123315, and shall print on each coupon the following:

(1) Specific supplemental foods and the quantities thereof for which the coupon may be redeemed.

(2) The period of validity of the nutrition coupon.

(3) The maximum value for which the nutrition coupon may be redeemed.

(b) To the extent feasible, the information required pursuant to subdivision (a) shall be provided in a form that may be read by optical scanning technology readily available to vendors. The department shall, no later than March 15, 2002, report to the Legislature on the feasibility and costs of providing the information in this form. This subdivision shall be implemented only to the extent that funds for its purposes are appropriated in the annual Budget Act or another statute.

SEC. 4. By making Section 123296 of the Health and Safety Code operative on July 1, 2002, the Legislature intends to provide the State

Department of Health Services sufficient time to ensure that it can monitor where California Special Supplemental Food Program for Women, Infants, and Children vouchers are cashed and that the department will have sufficient data to conduct inventory audits to protect the integrity of the program.

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## CHAPTER 843

An act to amend Section 290 of the Penal Code, relating to sex offenders.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 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). 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 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 which, 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, which 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 taken by the registering 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 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.

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'' include 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. It is the intent of the Legislature that efforts be made with respect to persons who are subject to this subparagraph who are on probation or parole to engage them in treatment.

(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 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 which, 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, which 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 taken by the registering 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 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.

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. It is the intent of the Legislature that efforts be made with respect to persons who are subject to this subparagraph who are on probation or parole to engage them in treatment.

(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'' include 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 taken by the registering 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 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. 2. (a) Section 1.1 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 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 290 of the Penal Code, (3) AB 1004 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 4, 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 4 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 4, 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 4 and AB 1004, in which case Sections 1, 1.1, and 1.2 of this bill shall not become operative.

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## CHAPTER 844

An act to amend Sections 45113, and 88013 of the Education Code, relating to public school employees.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 45113 of the Education Code is amended to read:

45113. The governing board of a school district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed one year. A permanent employee who accepts a promotion and fails to complete the probationary period for that promotional position, shall be employed in the classification from which he or she was promoted.

Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.

No disciplinary action shall be taken for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two years preceding the date of the filing of the notice of cause unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.

This section shall apply only to districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240) of this chapter.

SEC. 1.5. Section 45113 of the Education Code is amended to read:

45113. (a) The governing board of a school district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed one year. A

permanent employee who accepts a promotion and fails to complete the probationary period for that promotional position, shall be employed in the classification from which he or she was promoted.

(b) Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

(c) The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.

(d) No disciplinary action shall be taken for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two years preceding the date of the filing of the notice of cause unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.

(e) Nothing in this section shall be construed to prohibit the governing board, pursuant to the terms of an agreement with an employee organization under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, from delegating its authority to determine whether sufficient cause exists for disciplinary action against classified employees, excluding peace officers as defined in Section 830.32 of the Penal Code, to an impartial third party hearing officer. However, the governing board shall retain authority to review the determination under the standards set forth in Section 1286.2 of the Code of Civil Procedure.

(f) This section shall apply only to districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240) of this chapter.

SEC. 2. Section 88013 of the Education Code is amended to read:

88013. The governing board of a community college district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are, except as provided in Section 72411, designated as

permanent employees of the district after serving a prescribed period of probation which shall not exceed one year. A permanent employee who accepts a promotion and fails to complete the probationary period for that promotional classification, shall be employed in the position from which he or she was promoted.

Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.

No disciplinary action shall be taken for any cause that arose prior to the employee's becoming permanent, or for any cause that arose more than two years preceding the date of the filing of the notice of cause, unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.

This section shall apply only to districts not incorporating the merit system as outlined in Article 3 (commencing with Section 88060).

SEC. 2.5. Section 88013 of the Education Code is amended to read:

88013. (a) The governing board of a community college district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby these employees are, except as provided in Section 72411, designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed one year. A permanent employee who accepts a promotion and fails to complete the probationary period for that promotional classification, shall be employed in the position from which he or she was promoted.

(b) Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.

(c) The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him or her, a statement of the employee's right to a hearing on those charges, and the time within which the hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.

(d) No disciplinary action shall be taken for any cause that arose prior to the employee's becoming permanent, or for any cause that arose more than two years preceding the date of the filing of the notice of cause, unless the cause was concealed or not disclosed by the employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.

(e) Nothing in this section shall be construed to prohibit the governing board, pursuant to the terms of an agreement with an employee organization under Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, from delegating its authority to determine whether sufficient cause exists for disciplinary action against classified employees, excluding peace officers as defined in Section 830.32 of the Penal Code, to an impartial third party hearing officer. However, the governing board shall retain authority to review the determination under the standards set forth in Section 1286.2 of the Code of Civil Procedure.

(f) This section shall apply only to districts not incorporating the merit system as outlined in Article 3 (commencing with Section 88060).

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 45113 of the Education Code proposed by both this bill and AB 128. 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 45113 of the Education Code, and (3) this bill is enacted after AB 128, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 88013 of the Education Code proposed by both this bill and AB 128. 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 88013 of the Education Code, and (3) this bill is enacted after AB 128, in which case Section 2 of this bill shall not become operative.

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CHAPTER 845

An act to amend Section 14175 of the Penal Code, and Section 15660 of the Welfare and Institutions Code, relating to crime prevention.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 14175 of the Penal Code is amended to read:

14175. This title shall become inoperative on July 1, 2002, and, is repealed as of January 1, 2003, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date.

SEC. 2. Section 15660 of the Welfare and Institutions Code is amended to read:

15660. (a) The Department of Justice shall secure any criminal record of a person to determine whether the person has been convicted or incarcerated within the last 10 years as the result of committing a sex offense against a minor, a violation of Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, theft, robbery, burglary, or any felony, and shall provide a subsequent arrest notification pursuant to Section 11105.2 of the Penal Code, if both of the following conditions are met:

(1) An employer of the person requests the determination and submits fingerprints of the person to the Department of Justice. For purposes of this paragraph, ''employer'' includes, but is not limited to, an in-home supportive services recipient, as defined by Section 12302.2 and any recipient of personal care services under the Medi-Cal program pursuant to Section 14132.95.

(2) The person is unlicensed and provides nonmedical domestic or personal care to an aged or disabled adult in the adult's own home.

(b) (1) If it is found that the person has been convicted or incarcerated within the last 10 years as the result of committing a sex offense against a minor, a violation of Section 243.4, 273a, 273d, or subdivision (a) or (b) of Section 368, of the Penal Code, theft, robbery, burglary, or any felony, the Department of Justice shall notify the employer of that fact. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact.

(2) Any employer may deny employment to any person who is the subject of a report under paragraph (1) when the report indicates that the person has committed any of the crimes identified in paragraph (1).

(3) Nothing in this section shall be construed to require any employer to hire any person who is the subject of a report under paragraph (1) when

the report indicates that the person has not committed any of the crimes indicated in paragraph (1).

(c) (1) Fingerprints shall be on a card provided by the Department of Justice for the purpose of obtaining a set of fingerprints. The employer shall submit the fingerprints to the Department of Justice. Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the employer of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the employer with a statement of that fact as soon as possible, but not later than 30 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, as soon as possible, but not later than 30 calendar days from the date of receipt of the fingerprints, notify the employer that the fingerprints were illegible.

(2) Fingerprints may be taken by any local law enforcement officer or agency for purposes of paragraph (1).

(3) Counties shall notify any recipient of, or applicant for, in-home supportive services or personal care services under the Medi-Cal program, upon his or her application for in-home supportive services or personal care services or during his or her annual redetermination, or upon the recipient's changing providers, that a criminal record check is available, and that the check can be performed by the Department of Justice.

(d) The Department of Justice shall charge a fee to the employer to cover the costs of administering this section.

(e) It is the intent of the Legislature that the Department of Justice charge a fee to cover its cost in providing services in accordance with this section to comply with the 30 calendar day requirement for provision to the department of the criminal record information, as contained in subdivision (c).

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## CHAPTER 846

An act to add Section 3212.11 to the Labor Code, relating to workers' compensation.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 3212.11 is added to the Labor Code, to read:

3212.11. This section applies to both of the following: (a) active lifeguards employed by a city, county, city and county, district, or other public or municipal corporation or political subdivision, and (b) active state lifeguards employed by the Department of Parks and Recreation. The term ''injury,'' as used in this division, includes skin cancer that develops or manifests itself during the period of the lifeguard's employment. The compensation awarded for that injury shall include full hospital, surgical, and medical treatment, disability indemnity, and death benefits, as provided by the provisions of this division.

Skin cancer so developing or manifesting itself shall be presumed to arise out of and in the course of the employment. This presumption is disputable and may be controverted by other evidence, but unless so controverted, the appeals board shall find in accordance with it. This presumption shall be extended to a lifeguard following termination of service for a period of three calendar months for each full year of the requisite service, but not to exceed 60 months in any circumstance, commencing with the last date actually worked in the specified capacity.

Skin cancer so developing or manifesting itself in these cases shall not be attributed to any disease existing prior to that development or manifestation.

This section shall only apply to lifeguards employed for more than three consecutive months in a calendar year.

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## CHAPTER 847

An act to add Section 7034.1 to the Business and Professions Code, and to add Section 21162 to the Public Contract Code, relating to contracts.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 7034.1 is added to the Business and Professions Code, to read:

7034.1. The temporary employment agency, employment referral service, labor contractor, or other similar entity that supplied the employee pursuant to Section 7034 shall not be required to secure the payment of compensation for any employee for whom a licensed contractor is required to secure payment of compensation.

SEC. 2. Section 21162 is added to the Public Contract Code, to read:

21162. Notwithstanding any other provision of law, upon the approval of the board of directors, and without the approval of the board of supervisors, the district may use, for building construction contracts, the procedures described in Section 20133, as that section reads on January 1, 2002 or as it may be amended after that date.

SEC. 3. Section 7034.1 of the Business and Professions Code, as added by Section 1 of this act, shall become operative only if Assembly Bill 1679 of the 2001–02 Regular Session is enacted and becomes operative on or before January 1, 2002.

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## CHAPTER 848

An act to add Section 19549.14 to the Business and Professions Code, relating to horse racing.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 19549.14 is added to the Business and Professions Code, to read:

19549.14. (a) Notwithstanding, Section 19489 or any other provision of this chapter, the board may permit the San Mateo County Fair to conduct live racing meetings at another site within or outside San Mateo County if its present site, Bay Meadows, closes.

(b) Live horse racing meetings conducted by the San Mateo County Fair, whether they are conducted within or outside of San Mateo County, shall be subject to the same provisions as are presently applicable to the San Mateo County Fair's conduct of live horse racing meetings at Bay Meadows.

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## CHAPTER 849

An act to amend Section 23550.5 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 23550.5 of the Vehicle Code is amended to read:

23550.5. (a) A person is guilty of a public offense, punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000) if that person is convicted of a violation of Section 23152 or 23153, and the offense occurred within 10 years of any of the following:

(1) A prior violation of Section 23152 that was punished as a felony under Section 23550 or this section, or both, or under former Section 23175 or former Section 23175.5, or both.

(2) A prior violation of Section 23153 that was punished as a felony.

(3) A prior violation of paragraph (1) of subdivision (c) of Section 192 of the Penal Code that was punished as a felony.

(b) Every person who, having previously been convicted of a violation of Section 191.5 of the Penal Code or a felony violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is subsequently convicted of a violation of Section 23152 or 23153 is guilty of a public offense punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000).

(c) The privilege to operate a motor vehicle of a person convicted of a violation that is punishable under subdivision (a) or (b) shall be revoked by the department under paragraph (7) of subdivision (a) of Section 13352, unless paragraph (6) of subdivision (a) of Section 13352 is also applicable, in which case the privilege shall be revoked under that provision.

(d) Any person convicted of a violation of Section 23152 that is punishable under this section shall be designated an habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation under subdivision (b) of Section 13350.

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.

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## CHAPTER 850

An act to add Section 87482.9 to the Education Code, relating to community colleges.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 87482.9 is added to the Education Code, to read:

87482.9. This section applies only to temporary and part-time faculty within the meaning of Section 87482.5. The issue of earning and retaining of annual reappointment rights shall be a mandatory subject of negotiation with respect to the collective bargaining process relating to any new or successor contract between community college districts and temporary or part-time faculty occurring on or after January 1, 2002.

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## CHAPTER 851

An act to add Chapter 3 (commencing with Section 22890) to Part 5 of Division 5 of Title 2 of the Government Code, relating to public employee health benefits trusts.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Chapter 3 (commencing with Section 22890) is added to Part 5 of Division 5 of Title 2 of the Government Code, to read:

### CHAPTER 3. RIGHTS OF HEALTH BENEFITS TRUSTS

22890. (a) The purpose of this chapter is to establish the rights of the California Association of Highway Patrolman Health Benefits Trust, the Peace Officers Research Association of California Health Benefits Trust, and the California Correctional Peace Officer Association Health

Benefits Trust to recover medical costs paid to a participant for injuries, including injuries that result in death, caused by or allegedly caused by a third party.

(b) This chapter does not apply if the participant is injured in the course and scope of his or her employment. In those cases, Chapter 5 (commencing with Section 3850) of Part 1 of Division 4 of the Labor Code shall govern.

22891. As used in this chapter:

(a) ''Health benefits trust'' means the California Association of Highway Patrolman Health Benefits Trust, the Peace Officers Research Association of California Health Benefits Trust, or the California Correctional Peace Officer Association Health Benefits Trust.

(b) ''Participant'' means an employee, annuitant, or family member who is a member of a health benefits trust and who is injured by or due to the actions or inactions of a third person, and includes any other person to whom a claim accrues by reason of the injury or death of the employee, annuitant or family member.

(c) ''Third party'' means any tortfeasor or alleged tortfeasor against whom the participant asserts a claim for injury or death.

22892. (a) A health benefits trust may assert a lien for health benefits paid on behalf of a participant against any settlement with, or arbitration award or judgment against, a third party. No lien asserted by a health benefits trust under this section may exceed the amount actually paid by the trust to any treating medical provider.

(b) The participant, if not represented by an attorney, or the participant's attorney shall immediately send, by certified mail, written notice of the existence of any claim or action against a third party, to the following:

(1) The health benefits trust.

(2) A hospital or any hospital affiliated health facility, as defined in Section 1250 of the Health and Safety Code, that is known to have provided health care services to the participant.

(c) If medical costs are paid by the health benefits trust, contract providers may not assert an independent lien against the participant and contract providers who agree, by contract, to a specified rate may not seek to recover an amount that exceeds the contracted rate against the participant.

This subdivision is not applicable to a lien for hospital services pursuant to Chapter 4 (commencing with Section 3045.1) of Title 14 of Part 4 of Division 3 of the Civil Code.

(d) If the participant engaged an attorney, the lien for health services asserted by a health benefits trust under subdivision (a) may not exceed the lesser of the actual amount paid by the trust or one-third of the

moneys due to the participant under any final judgment, compromise, arbitration, or settlement agreement.

(e) If the participant did not engage an attorney, the lien for health services asserted by the health benefits trust under subdivision (a) may not exceed the lesser of the actual amount paid by the trust or one-half of the moneys due to the participant under any final judgment, compromise, arbitration, or settlement agreement.

(f) If a final judgment includes a special finding by a judge, jury, or arbitrator that the participant was partially at fault, the lien asserted by the health benefits trust shall be reduced by the same comparative fault percentage by which the participant's recovery was reduced.

(g) The lien asserted by the health benefits trust shall be subject to pro rata reduction, commensurate with the participant's reasonable attorneys' fees and costs, in accordance with the common fund doctrine.

(h) The court or arbitrator may also take into account the obligation, if any, of the health benefits trust to make future medical payments on behalf of the participant for the medical condition that gave rise to the claim against the third party.

(i) The provisions of this section may not be admitted into evidence nor given in any instruction in any civil action or proceeding between a participant and a third party.

22893. (a) A court or arbitrator having jurisdiction over a claim by a participant against a third party shall additionally have jurisdiction over apportionment of any recovery on the claim, if the participant and the health benefits trust or any other party asserting a lien cannot agree on an allocation.

(b) In the event of a settlement between the participant and the third party where there is no agreement on proper apportionment of the settlement between the participant and the health benefits trust or any other party asserting a lien, the participant may petition the court for a determination in accordance with this section. The parties may introduce evidence with respect to the issue of apportionment in any manner authorized by the Evidence Code, including, but not limited to, introduction by sworn declaration or by relevant discovery responses. The participant shall make available to the health benefits trust all relevant discovery in a reasonable and timely manner. The use of witness testimony shall be discouraged and shall be allowed only by stipulation of the parties.

(c) In the event of a judgment where there is no agreement on proper apportionment of the judgment between the participant and the health benefits trust or any other party asserting a lien, the participant may file

a post-trial motion asking the court to apportion the judgment in accordance with this section.

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## CHAPTER 852

An act to amend Section 77654 of the Government Code, relating to courts, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 77654 of the Government Code is amended to read:

77654. (a) The task force shall be appointed on or before October 1, 1997.

(b) The task force shall meet and establish its operating procedures on or before September 1, 1998, and submit its plan for the entire review of court facilities by October 1, 1998, to the Judicial Council, Legislature, and Governor.

(c) The task force shall review all available court facility standards and make preliminary determinations of acceptable standards for construction, renovation, and remodeling of court facilities, and shall report those preliminary determinations to the Judicial Council, the Legislature, and the Governor in an interim report on or before July 1, 1999.

(d) The task force shall complete a survey of all trial and appellate court facilities in the state and report its findings to the Judicial Council, the Legislature, and the Governor in a second interim report on or before January 1, 2001. The report shall document all of the following:

(1) The state of existing court facilities.

(2) The need for new or modified court facilities.

(3) The currently available funding options for constructing or renovating court facilities.

(4) The impact which creating additional judgeships has upon court facility and other justice system facility needs.

(5) The effects which trial court coordination and consolidation have upon court and justice system facilities needs.

(6) Administrative and operational changes which can reduce or mitigate the need for added court or justice system facilities.

(7) Recommendations for specific funding responsibilities among the entities of government including full state responsibility, full county responsibility, or shared responsibility.

(8) A proposed transition plan if responsibility is to be changed.

(9) Recommendations regarding funding sources for court facilities and funding mechanisms to support court facilities.

(e) The interim reports shall be circulated for comment to the counties, the judiciary, the Legislature, and the Governor. The task force may also circulate these reports to users of the court facilities.

(f) The task force shall submit a final report to the Judicial Council, the Legislature, and the Governor on or before July 1, 2001. The report shall include all elements of the interim reports incorporating any changes recommended by the task force in response to comments received.

(g) Notwithstanding any other provision of law, during the period from July 1, 1997 to December 31, 2002, inclusive, the board of supervisors of each county shall be responsible for providing suitable and necessary facilities for judicial officers and court support staff for judicial positions created prior to July 1, 1996, to the extent required by Section 68073. The board of supervisors of each county shall also be responsible for providing suitable and necessary facilities for judicial officers and court support staff for judgeships authorized by statutes chaptered in 1996 to the extent required by Section 68073, provided that the board of supervisors agrees that new facilities are either not required or that the county is willing to provide funding for court facilities. Unless a court and a county otherwise mutually agree, the state shall assume responsibility for suitable and necessary facilities for judicial officers and support staff for any judgeships authorized during the period from January 1, 1998, to December 31, 2002, inclusive.

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

In order to provide for suitable and necessary facilities for judicial officers and support staff, it is necessary that this bill take effect immediately.

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## CHAPTER 853

An act to add and repeal Chapter 8.5 (commencing with Section 13875) of Title 6 of Part 4 of the Penal Code, relating to crime prevention.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Chapter 8.5 (commencing with Section 13875) is added to Title 6 of Part 4 of the Penal Code, to read:

## CHAPTER 8.5. CALIFORNIA DRUG ENDANGERED CHILD PROTECTION ACT

13875. (a) The Legislature finds and declares that the clandestine manufacture of methamphetamine and other controlled substances has created a public health and safety crisis for children in California. An increasing number of children in this state are being abused, neglected, and placed at highest risk of harm or death as a result of their presence in homes or dwellings involved in clandestine drug production and distribution. In 1999, more than 1,200 children were found in 2,400 clandestine laboratories seized by California law enforcement agencies. That same year, the number of drug-related toxic ''cleanups'' in California reached an all-time high. The actual number of drug endangered children is unknown, since many clandestine home labs are abandoned due to fire or explosion before they become known to authorities.

(b) The Legislature further finds and declares that the response to children discovered in clandestine drug labs varies greatly from county to county. In many cases, the response has been inadequate. Services may be fragmented, and untrained staff can fail to recognize the danger to the child. Without coordinated assessment and intervention, children may be left in or returned to these deadly environments. The Legislature further finds and declares that the Counties of Los Angeles, San Diego, Orange, Riverside, San Bernardino, Butte, and Shasta have implemented multiagency response teams consisting of law enforcement, prosecution and health or children's service, that can respond most effectively to clandestine laboratories in which children are present.

(c) The Legislature further finds and declares that clandestine laboratories are increasingly operated in single and multifamily homes, garages, apartments, motels, and mobile homes in urban and suburban neighborhoods. The dangers to children, those in the lab and nearby, are significantly higher in those counties where most clandestine labs are located in residential neighborhoods. The Legislature recognizes the need to provide financial assistance for those counties that have the highest number of clandestine laboratory seizures with children present,

and that have implemented multiagency response teams for drug endangered children.

(d) The Legislature intends to support the efforts of counties that have implemented a multiagency response to drug endangered children that includes, at a minimum, all of the following:

(1) Staffing a multiagency team consisting of law enforcement, prosecution, and health or children's services personnel or both health and children's services personnel, to respond to drug endangered child cases.

(2) Coordinating immediate and ongoing medical treatment and family services for drug endangered children under the direction of a child services worker.

(3) Vertically prosecuting drug manufacturers and sellers who endanger children.

13876. (a) There is hereby established in the Office of Criminal Justice Planning a pilot program of technical and financial assistance for counties, designated the California Drug Endangered Child Protection Act. All funds appropriated to the Office of Criminal Justice Planning for the purposes of this chapter shall be administered and disbursed by the executive director and shall to the greatest extent feasible be coordinated or consolidated with federal funds that may be made available for these purposes. The Office of Criminal Justice Planning may retain up to 5 percent of the amount appropriated for purposes of this act to cover costs associated with administering this program.

(b) The executive director is authorized to allocate and award funds to counties in which the California Drug Endangered Child Protection Act is implemented in substantial compliance with the policies and criteria set forth in this chapter.

(c) The allocation and award of funds shall be made upon application executed by the county's district attorney, or county sheriff, if the sheriff is currently the lead agency in the county's existing Drug Endangered Children Program, and approved by its board of supervisors. Funds disbursed under this chapter shall not supplant local funds that would, in the absence of the California Drug Endangered Child Protection Act, be made available to support the functions of this program. The district attorney or county sheriff shall consult with each agency receiving funding as part of the county's Drug Endangered Children Program to develop the budget submitted to the Office of Criminal Justice Planning for the purposes of implementing this chapter.

(d) Law enforcement, prosecution, health, and children's services personnel working on multiagency teams established pursuant to this chapter shall be considered ''multidisciplinary personnel'' as defined in Section 18951 of the Welfare and Institutions Code, and may share information necessary for the protection of the minor.

13877. District attorneys, or county sheriffs, if the sheriff is currently the lead agency in the county's existing Drug Endangered Children Program, receiving funds under this chapter shall coordinate multiagency drug endangered child response teams in cooperation with local, state and federal law enforcement agencies, and the county departments of health and children's services. Under the direction of a district attorney, or county sheriff, if the sheriff is currently the lead agency in the county's existing Drug Endangered Children Program, a multiagency team's services shall include, but not be limited to:

(a) Prompt, multiagency response to cases involving drug endangered children. Teams shall have the ability to respond quickly at any time, day or night, and to reduce the amount of time children must wait for medical screening, treatment, and other necessary services.

(b) Develop, adopt, and regularly review local protocols for the multiagency response to cases involving drug endangered children.

(c) Convene a countywide drug endangered child protection task force, that shall include, but not be limited to, representatives from law enforcement, children's services, a county juvenile court, hospitals and health services, fire and paramedics, education, probation, prosecution, and the Victim-Witness Assistance Program. Each countywide task force shall meet no less than twice yearly to review local protocols and recommend local policies and procedures for the protection, treatment, and continuing care of drug endangered children.

(d) Maintain complete records of each case for documentation and evaluation.

13877.5. The district attorney or county sheriff, if the sheriff is currently the lead agency in the county's existing Drug Endangered Children Program, of a county may utilize program funds made available under this section to subcontract for specialized services with local law enforcement or the county departments of health or children's services, if local resources are not sufficient to staff multiagency drug endangered child response teams at the level required in subdivision (a) of Section 13877. Those subcontracts shall be in an amount sufficient to obtain federal matching funds for the services of at least two full-time children's services workers, and shall compensate participating agencies for the reasonable cost of overtime or equipment, or both overtime and equipment, to respond as a multiagency team.

13878. District attorneys receiving funds under this chapter shall concentrate enhanced prosecution efforts and resources upon individuals who endanger children through exposure to the clandestine manufacture of controlled substances, their precursors, and analogs under Sections 11379.6 and 11383 of the Health and Safety Code. Where appropriate, felony child endangerment charges shall be filed in every case under subdivision (a) of Section 273a of the Penal Code or special

allegations under Section 11379.7 of the Health and Safety Code. Enhanced prosecution efforts and resources under the Drug Endangered Child Protection Act shall include, but not be limited to, all of the following:

(a) ''Vertical prosecutorial representation,'' whereby the prosecutor who makes the initial filing or appearance in a drug endangered child case will perform all subsequent court appearances on that particular case through its conclusion, including the sentencing phase.

(b) Assignment of highly qualified investigators and prosecutors to drug endangered child cases.

(c) Significant reduction of caseloads for investigators and prosecutors assigned to drug endangered child cases.

13879. Commencing one year after the effective date of this chapter, the Executive Director of OCJP shall make an annual report to the Legislature on the fiscal and operational status of the program. This report shall include, at a minimum, an evaluation of the number of clandestine laboratories seized, the number of children located and removed from clandestine laboratories, and the number of prosecutions of individuals involved in the manufacturing and distribution of methamphetamine or other controlled substances manufactured at clandestine laboratories where children are present.

13879.5. (a) Available funds may be used by the Office of Criminal Justice Planning to fund countywide Drug Endangered Children Programs in the Counties of Butte, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Shasta, for the purpose of implementing this chapter.

(b) (1) The funds available in subdivision (a) that remain after funding the countywide programs specified in subdivision (a) may be distributed to up to five additional counties to fund Drug Endangered Children Programs. These funds shall be distributed to counties on a competitive grant basis.

(2) The following factors shall be considered in awarding these grants:

(A) Size of the county.

(B) Number of clandestine laboratories seized in the county.

(C) Number of prosecutions brought against clandestine laboratories at which children were found.

(D) Number of children found at seized or prosecuted clandestine laboratories.

(E) Does the county have the demonstrated ability to utilize multiagency emergency response teams to meet the immediate health and safety needs of children found at clandestine drug laboratories, as well as a demonstrated ability to prosecute the individuals operating those laboratories.

(3) One representative of each local agency involved in implementing a county's Drug Endangered Children Program shall form an executive committee, the function of which is to distribute the grant funds awarded the county under subdivision (a) in a fair and equitable manner and for the purposes of implementing this chapter.

(4) The county health and welfare agencies shall be responsible for coordinating health-related services for children living in clandestine laboratories seized by a county drug endangered children response team pursuant to this program. The county health and welfare agencies shall consult with the district attorney when developing the health services protocols in order to ensure that the health services protocols do not interfere with the law enforcement functions of the drug endangered children response teams.

13879.7. This chapter 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.

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## CHAPTER 854

An act to amend Sections 1282.3 and 5536 of the Business and Professions Code, to amend Sections 670, 1036.2, and 1350 of the Evidence Code, to amend Section 11019.9 of the Government Code, to amend Sections 11362.9, 11372.7, 11550, 11573.5, 42400.1, 42400.2, 42400.3, 42402.1, 42402.2, 42402.3, and 109580 of the Health and Safety Code, to amend Sections 28, 182, 186.11, 186.22, 186.26, 243.1, 312.1, 320.5, 368, 466, 481.1, 530.7, 593d, 593e, 645, 646.93, 666.7, 667.7, 670, 778a, 933.06, 1170.11, 1174.4, 1203.044, 1203.097, 1280.1, 2677, 2717.4, 3000, 3000.1, 3058.9, 4011.1, 6008, 6126.5, 6236, 7012, 11180, 11418, 12022.53, 12094, 12288, and 13519.4 of, to amend and renumber Sections 113, 597.2, 1511, and 5058.5 of, and to amend and renumber the heading of Title 10.5 (commencing with Section 14150) of Part 4 of, the Penal Code, to amend Section 19705 of the Revenue and Taxation Code, to amend Sections 1808.21, 13202.4, and 22658.1 of the Vehicle Code, and to amend Sections 302, 319.1, 367, 602, 635.1, and 5270.55 of, to amend and renumber Sections 602.5 and 730.7 of, and to amend and renumber the heading of Article 18.5 (commencing with Section 743) of Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code, relating to crime.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 1282.3 of the Business and Professions Code is amended to read:

1282.3. (a) It is unlawful for any person to act with willful or wanton disregard for a person's safety that exposes the person to a substantial risk of, or that causes, great bodily injury by affecting the integrity of a clinical laboratory test or examination result through improper collection, handling, storage, or labeling of the biological specimen or the erroneous transcription or reporting of clinical laboratory test or examination results.

(b) Notwithstanding Section 1287, a violation of this section shall be punished as follows:

(1) A first conviction is punishable by imprisonment in a county jail for a period of not more than one year, or by imprisonment in the state prison for 16 months, or two or three years, by a fine not exceeding fifty thousand dollars ($50,000), or by both this imprisonment and fine.

(2) A second or subsequent conviction is punishable by imprisonment in the state prison for two, four, or six years, or by a fine not exceeding fifty thousand dollars ($50,000), or by both this imprisonment and fine.

(c) The enforcement remedies provided under this section are not exclusive, and shall not preclude the use of any other criminal or civil remedy. However, an act or omission punishable in different ways by this section and any other provision of law shall not be punished under more than one provision. Under those circumstances, the penalty to be imposed shall be determined as set forth in Section 654 of the Penal Code.

SEC. 2. Section 5536 of the Business and Professions Code is amended to read:

5536. (a) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who is not licensed to practice architecture under this chapter to practice architecture in this state, to use any term confusingly similar to the word architect, to use the stamp of a licensed architect, as provided in Section 5536.1, or to advertise or put out any sign, card, or other device that might indicate to the public that he or she is an architect, that he or she is qualified to engage in the practice of architecture, or that he or she is an architectural designer.

(b) It is a misdemeanor, punishable as specified in subdivision (a), for any person who is not licensed to practice architecture under this chapter to affix a stamp or seal that bears the legend ''State of California'' or

words or symbols that represent or imply that the person is so licensed by the state to prepare plans, specifications, or instruments of service.

(c) It is a misdemeanor, punishable as specified in subdivision (a), for any person to advertise or represent that he or she is a ''registered building designer'' or is registered or otherwise licensed by the state as a building designer.

SEC. 3. Section 670 of the Evidence Code is amended to read:

670. (a) In any dispute concerning payment by means of a check, a copy of the check produced in accordance with Section 1550 of the Evidence Code, together with the original bank statement that reflects payment of the check by the bank on which it was drawn or a copy thereof produced in the same manner, creates a presumption that the check has been paid.

(b) As used in this section:

(1) ''Bank'' means any person engaged in the business of banking and includes, in addition to a commercial bank, a savings and loan association, savings bank, or credit union.

(2) ''Check'' means a draft, other than a documentary draft, payable on demand and drawn on a bank, even though it is described by another term, such as ''share draft'' or ''negotiable order of withdrawal.''

SEC. 4. Section 1036.2 of the Evidence Code is amended to read:

1036.2. As used in this article, ''sexual assault'' includes all of the following:

(a) Rape, as defined in Section 261 of the Penal Code.

(b) Unlawful sexual intercourse, as defined in Section 261.5 of the Penal Code.

(c) Rape in concert with force and violence, as defined in Section 264.1 of the Penal Code.

(d) Rape of a spouse, as defined in Section 262 of the Penal Code.

(e) Sodomy, as defined in Section 286 of the Penal Code, except a violation of subdivision (e) of that section.

(f) A violation of Section 288 of the Penal Code.

(g) Oral copulation, as defined in Section 288a of the Penal Code, except a violation of subdivision (e) of that section.

(h) Sexual penetration, as defined in Section 289 of the Penal Code.

(i) Annoying or molesting a child under 18, as defined in Section 647a of the Penal Code.

(j) Any attempt to commit any of the above acts.

SEC. 5. Section 1350 of the Evidence Code is amended to read:

1350. (a) In a criminal proceeding charging a serious felony, evidence of a statement made by a declarant is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness, and all of the following are true:

(1) There is clear and convincing evidence that the declarant's unavailability was knowingly caused by, aided by, or solicited by the party against whom the statement is offered for the purpose of preventing the arrest or prosecution of the party and is the result of the death by homicide or the kidnapping of the declarant.

(2) There is no evidence that the unavailability of the declarant was caused by, aided by, solicited by, or procured on behalf of, the party who is offering the statement.

(3) The statement has been memorialized in a tape recording made by a law enforcement official, or in a written statement prepared by a law enforcement official and signed by the declarant and notarized in the presence of the law enforcement official, prior to the death or kidnapping of the declarant.

(4) The statement was made under circumstances which indicate its trustworthiness and was not the result of promise, inducement, threat, or coercion.

(5) The statement is relevant to the issues to be tried.

(6) The statement is corroborated by other evidence which tends to connect the party against whom the statement is offered with the commission of the serious felony with which the party is charged. The corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

(b) If the prosecution intends to offer a statement pursuant to this section, the prosecution shall serve a written notice upon the defendant at least 10 days prior to the hearing or trial at which the prosecution intends to offer the statement, unless the prosecution shows good cause for the failure to provide that notice. In the event that good cause is shown, the defendant shall be entitled to a reasonable continuance of the hearing or trial.

(c) If the statement is offered during trial, the court's determination shall be made out of the presence of the jury. If the defendant elects to testify at the hearing on a motion brought pursuant to this section, the court shall exclude from the examination every person except the clerk, the court reporter, the bailiff, the prosecutor, the investigating officer, the defendant and his or her counsel, an investigator for the defendant, and the officer having custody of the defendant. Notwithstanding any other provision of law, the defendant's testimony at the hearing shall not be admissible in any other proceeding except the hearing brought on the motion pursuant to this section. If a transcript is made of the defendant's testimony, it shall be sealed and transmitted to the clerk of the court in which the action is pending.

(d) As used in this section, ''serious felony'' means any of the felonies listed in subdivision (c) of Section 1192.7 of the Penal Code or any

violation of Section 11351, 11352, 11378, or 11379 of the Health and Safety Code.

(e) If a statement to be admitted pursuant to this section includes hearsay statements made by anyone other than the declarant who is unavailable pursuant to subdivision (a), those hearsay statements are inadmissible unless they meet the requirements of an exception to the hearsay rule.

SEC. 6. Section 11019.9 of the Government Code is amended to read:

11019.9. Each state department and state agency shall enact and maintain a permanent privacy policy, in adherence with the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code), that includes, but is not limited to, the following principles:

(a) Personally identifiable information is only obtained through lawful means.

(b) The purposes for which personally identifiable data are collected are specified at or prior to the time of collection, and any subsequent use is limited to the fulfillment of purposes not inconsistent with those purposes previously specified.

(c) Personal data shall not be disclosed, made available, or otherwise used for purposes other than those specified, except with the consent of the subject of the data, or as authorized by law or regulation.

(d) Personal data collected must be relevant to the purpose for which it is collected.

(e) The general means by which personal data is protected against loss, unauthorized access, use modification or disclosure shall be posted, unless that disclosure of general means would compromise legitimate state department or state agency objectives or law enforcement purposes.

(f) Each state department or state agency shall designate a position within the department or agency, the duties of which shall include, but not be limited to, responsibility for the privacy policy within that department or agency.

SEC. 7. Section 11362.9 of the Health and Safety Code is amended to read:

11362.9. (a) (1) It is the intent of the Legislature that the state commission objective scientific research by the premier research institute of the world, the University of California, regarding the efficacy and safety of administering marijuana as part of medical treatment. If the Regents of the University of California, by appropriate resolution, accept this responsibility, the University of California shall create a three-year program, to be known as the California Marijuana Research Program.

(2) The program shall develop and conduct studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, shall develop medical guidelines for the appropriate administration and use of marijuana.

(b) The program may immediately solicit proposals for research projects to be included in the marijuana studies. Program requirements to be used when evaluating responses to its solicitation for proposals, shall include, but not be limited to, all of the following:

(1) Proposals shall demonstrate the use of key personnel, including clinicians or scientists and support personnel, who are prepared to develop a program of research regarding marijuana's general medical efficacy and safety.

(2) Proposals shall contain procedures for outreach to patients with various medical conditions who may be suitable participants in research on marijuana.

(3) Proposals shall contain provisions for a patient registry.

(4) Proposals shall contain provisions for an information system that is designed to record information about possible study participants, investigators, and clinicians, and deposit and analyze data that accrues as part of clinical trials.

(5) Proposals shall contain protocols suitable for research on marijuana, addressing patients diagnosed with the acquired immunodeficiency syndrome (AIDS) or the human immunodeficiency virus (HIV), cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The proposal may also include research on other serious illnesses, provided that resources are available and medical information justifies the research.

(6) Proposals shall demonstrate the use of a specimen laboratory capable of housing plasma, urine, and other specimens necessary to study the concentration of cannabinoids in various tissues, as well as housing specimens for studies of toxic effects of marijuana.

(7) Proposals shall demonstrate the use of a laboratory capable of analyzing marijuana, provided to the program under this section, for purity and cannabinoid content and the capacity to detect contaminants.

(c) In order to ensure objectivity in evaluating proposals, the program shall use a peer review process that is modeled on the process used by the National Institutes of Health, and that guards against funding research that is biased in favor of or against particular outcomes. Peer reviewers shall be selected for their expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the applicants or the topic of an approach taken in the proposed research. Peer reviewers shall judge research proposals on several criteria, foremost among which shall be both of the following:

(1) The scientific merit of the research plan, including whether the research design and experimental procedures are potentially biased for or against a particular outcome.

(2) Researchers' expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the topic of, and the approach taken in, the proposed research.

(d) If the program is administered by the Regents of the University of California, any grant research proposals approved by the program shall also require review and approval by the research advisory panel.

(e) It is the intent of the Legislature that the program be established as follows:

(1) The program shall be located at one or more University of California campuses that have a core of faculty experienced in organizing multidisciplinary scientific endeavors and, in particular, strong experience in clinical trials involving psychopharmacologic agents. The campuses at which research under the auspices of the program is to take place shall accommodate the administrative offices, including the director of the program, as well as a data management unit, and facilities for storage of specimens.

(2) When awarding grants under this section, the program shall utilize principles and parameters of the other well-tested statewide research programs administered by the University of California, modeled after programs administered by the National Institutes of Health, including peer review evaluation of the scientific merit of applications.

(3) The scientific and clinical operations of the program shall occur, partly at University of California campuses, and partly at other postsecondary institutions, that have clinicians or scientists with expertise to conduct the required studies. Criteria for selection of research locations shall include the elements listed in subdivision (b) and, additionally, shall give particular weight to the organizational plan, leadership qualities of the program director, and plans to involve investigators and patient populations from multiple sites.

(4) The funds received by the program shall be allocated to various research studies in accordance with a scientific plan developed by the Scientific Advisory Council. As the first wave of studies is completed, it is anticipated that the program will receive requests for funding of additional studies. These requests shall be reviewed by the Scientific Advisory Council.

(5) The size, scope, and number of studies funded shall be commensurate with the amount of appropriated and available program funding.

(f) All personnel involved in implementing approved proposals shall be authorized as required by Section 11604.

(g) Studies conducted pursuant to this section shall include the greatest amount of new scientific research possible on the medical uses of, and medical hazards associated with, marijuana. The program shall consult with the Research Advisory Panel analogous agencies in other states, and appropriate federal agencies in an attempt to avoid duplicative research and the wasting of research dollars.

(h) The program shall make every effort to recruit qualified patients and qualified physicians from throughout the state.

(i) The marijuana studies shall employ state-of-the-art research methodologies.

(j) The program shall ensure that all marijuana used in the studies is of the appropriate medical quality and shall be obtained from the National Institute on Drug Abuse or any other federal agency designated to supply marijuana for authorized research. If these federal agencies fail to provide a supply of adequate quality and quantity within six months of the effective date of this section, the Attorney General shall provide an adequate supply pursuant to Section 11478.

(k) The program may review, approve, or incorporate studies and research by independent groups presenting scientifically valid protocols for medical research, regardless of whether the areas of study are being researched by the committee.

(*l*) (1) To enhance understanding of the efficacy and adverse effects of marijuana as a pharmacological agent, the program shall conduct focused controlled clinical trials on the usefulness of marijuana in patients diagnosed with AIDS or HIV, cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The program may add research on other serious illnesses, provided that resources are available and medical information justifies the research. The studies shall focus on comparisons of both the efficacy and safety of methods of administering the drug to patients, including inhalational, tinctural, and oral, evaluate possible uses of marijuana as a primary or adjunctive treatment, and develop further information on optimal dosage, timing, mode of administration, and variations in the effects of different cannabinoids and varieties of marijuana.

(2) The program shall examine the safety of marijuana in patients with various medical disorders, including marijuana's interaction with other drugs, relative safety of inhalation versus oral forms, and the effects on mental function in medically ill persons.

(3) The program shall be limited to providing for objective scientific research to ascertain the efficacy and safety of marijuana as part of medical treatment, and should not be construed as encouraging or sanctioning the social or recreational use of marijuana.

(m) (1) Subject to paragraph (2), the program shall, prior to any approving proposals, seek to obtain research protocol guidelines from

the National Institutes of Health and shall, if the National Institutes of Health issues research protocol guidelines, comply with those guidelines.

(2) If, after a reasonable period of time of not less than six months and not more than a year has elapsed from the date the program seeks to obtain guidelines pursuant to paragraph (1), no guidelines have been approved, the program may proceed using the research protocol guidelines it develops.

(n) In order to maximize the scope and size of the marijuana studies, the program may do any of the following:

(1) Solicit, apply for, and accept funds from foundations, private individuals, and all other funding sources that can be used to expand the scope or timeframe of the marijuana studies that are authorized under this section. The program shall not expend more than 5 percent of its General Fund allocation in efforts to obtain money from outside sources.

(2) Include within the scope of the marijuana studies other marijuana research projects that are independently funded and that meet the requirements set forth in subdivisions (a) to (c), inclusive. In no case shall the program accept any funds that are offered with any conditions other than that the funds be used to study the efficacy and safety of marijuana as part of medical treatment. Any donor shall be advised that funds given for purposes of this section will be used to study both the possible benefits and detriments of marijuana and that he or she will have no control over the use of these funds.

(o) (1) Within six months of the effective date of this section, the program shall report to the Legislature, the Governor, and the Attorney General on the progress of the marijuana studies.

(2) Thereafter, the program shall issue a report to the Legislature every six months detailing the progress of the studies. The interim reports required under this paragraph shall include, but not be limited to, data on all of the following:

(A) The names and number of diseases or conditions under study.

(B) The number of patients enrolled in each study by disease.

(C) Any scientifically valid preliminary findings.

(p) If the Regents of the University of California implement this section, the President of the University of California shall appoint a multidisciplinary Scientific Advisory Council, not to exceed 15 members, to provide policy guidance in the creation and implementation of the program. Members shall be chosen on the basis of scientific expertise. Members of the council shall serve on a voluntary basis, with reimbursement for expenses incurred in the course of their participation. The members shall be reimbursed for travel and other necessary expenses incurred in their performance of the duties of the council.

(q) No more than 10 percent of the total funds appropriated be used for all aspects of the administration of this section.

(r) This section shall be implemented only to the extent that funding for its purposes is appropriated by the Legislature in the annual Budget Act.

SEC. 8. Section 11372.7 of the Health and Safety Code is amended to read:

11372.7. (a) Except as otherwise provided in subdivision (b) or (f), each person who is convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred fifty dollars ($150) for each separate offense. The court shall increase the total fine, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law.

(b) The court shall determine whether or not the person who is convicted of a violation of this chapter has the ability to pay a drug program fee. If the court determines that the person has the ability to pay, the court may set the amount to be paid and order the person to pay that sum to the county in a manner that the court believes is reasonable and compatible with the person's financial ability. In its determination of whether a person has the ability to pay, the court shall take into account the amount of any fine imposed upon that person and any amount that person has been ordered to pay in restitution. If the court determines that the person does not have the ability to pay a drug program fee, the person shall not be required to pay a drug program fee.

(c) The county treasurer shall maintain a drug program fund. For every drug program fee assessed and collected pursuant to subdivisions (a) and (b), an amount equal to this assessment shall be deposited into the fund for every conviction pursuant to this chapter, in addition to fines, forfeitures, and other moneys which are transmitted by the courts to the county treasurer pursuant to Sections 11372.5 and 11502. These deposits shall be made prior to any transfer pursuant to Section 11502. Amounts deposited in the drug program fund shall be allocated by the administrator of the county's drug program to drug abuse programs in the schools and the community, subject to the approval of the board of supervisors, as follows:

(1) The moneys in the fund shall be allocated through the planning process established pursuant to Sections 11983, 11983.1, 11983.2, and 11983.3.

(2) A minimum of 33 percent of the fund shall be allocated to primary prevention programs in the schools and the community. Primary prevention programs developed and implemented under this article shall emphasize cooperation in planning and program implementation among schools and community drug abuse agencies, and shall demonstrate coordination through an interagency agreement among county offices of

education, school districts, and the county drug program administrator. These primary prevention programs may include:

(A) School- and classroom-oriented programs, including, but not limited to, programs designed to encourage sound decisionmaking, an awareness of values, an awareness of drugs and their effects, enhanced self-esteem, social and practical skills that will assist students toward maturity, enhanced or improved school climate and relationships among all school personnel and students, and furtherance of cooperative efforts of school- and community-based personnel.

(B) School- or community-based nonclassroom alternative programs, or both, including, but not limited to, positive peer group programs, programs involving youth and adults in constructive activities designed as alternatives to drug use, and programs for special target groups, such as women, ethnic minorities, and other high-risk, high-need populations.

(C) Family-oriented programs, including, but not limited to, programs aimed at improving family relationships and involving parents constructively in the education and nurturing of their children, as well as in specific activities aimed at preventing drug abuse.

(d) Moneys deposited into a county drug program fund pursuant to this section shall supplement, and shall not supplant, any local funds made available to support the county's drug abuse prevention and treatment efforts.

(e) Five percent of the money allocated to primary prevention programs in schools and communities within the county pursuant to paragraph (2) of subdivision (c) shall be used for the purpose of conducting an annual evaluation. The annual evaluation shall be conducted by the office of the county superintendent of schools in counties where the program is operating in a single county or in the office of the county superintendent of schools in the county designated as the lead county in counties where the program is operating as a consortium of counties. The evaluation shall contain the following:

(1) A needs assessment evaluation which provides specific data regarding the problem to be resolved.

(2) A written report of the planning process outlining the deliberations, considerations, and conclusions following a review of the needs assessment.

(3) An end of fiscal year accountability evaluation that will indicate the program's continuing ability to reach appropriate program beneficiaries, deliver the appropriate benefits, and use funds appropriately.

(4) An impact evaluation charged with the task of assessing the effectiveness of the program. Guidelines for the evaluation report format and the timeliness for the submission of the report shall be developed by

the State Department of Education. Each county shall submit an evaluation report annually to the State Department of Education and the State Department of Education shall write and submit a report to the Legislature and Governor.

(f) This section shall not apply to any person convicted of a violation of subdivision (b) of Section 11357 of the Health and Safety Code.

SEC. 9. Section 11550 of the Health and Safety Code is amended to read:

11550. (a) No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating this subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days or more than one year in a county jail. The court may place a person convicted under this subdivision on probation for a period not to exceed five years and, except as provided in subdivision (c), shall in all cases in which probation is granted require, as a condition thereof, that the person be confined in a county jail for at least 90 days. Other than as provided by subdivision (c), in no event shall the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.

(b) Any person who (1) is convicted of violating subdivision (a) when the offense occurred within seven years of that person being convicted of two or more separate violations of that subdivision, and (2) refuses to complete a licensed drug rehabilitation program offered by the court pursuant to subdivision (c), shall be punished by imprisonment in a county jail for not less than 180 days nor more than one year. In no event does the court have the power to absolve a person convicted of a violation of subdivision (a) that is punishable under this subdivision from the obligation of spending at least 180 days in confinement in a county jail unless there are no licensed drug rehabilitation programs reasonably available.

For the purpose of this section, a drug rehabilitation program shall not be considered reasonably available unless the person is required to pay no more than the court determines that he or she is reasonably able to pay, in order to participate in the program.

(c) The court may, when it would be in the interest of justice, permit any person convicted of a violation of subdivision (a) punishable under subdivision (a) or (b) to complete a licensed drug rehabilitation program in lieu of part or all of the imprisonment in the county jail. As a condition of sentencing, the court may require the offender to pay all or a portion of the drug rehabilitation program.

In order to alleviate jail overcrowding and to provide recidivist offenders with a reasonable opportunity to seek rehabilitation pursuant to this subdivision, counties are encouraged to include provisions to augment licensed drug rehabilitation programs in their substance abuse proposals and applications submitted to the state for federal and state drug abuse funds.

(d) In addition to any fine assessed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(e) Notwithstanding subdivisions (a) and (b) or any other provision of law, any person who is unlawfully under the influence of cocaine, cocaine base, heroin, methamphetamine, or phencyclidine while in the immediate personal possession of a loaded, operable firearm is guilty of a public offense punishable by imprisonment in a county jail for not exceeding one year or in state prison.

As used in this subdivision ''immediate personal possession'' includes, but is not limited to, the interior passenger compartment of a motor vehicle.

(f) Every person who violates subdivision (e) is punishable upon the second and each subsequent conviction by imprisonment in the state prison for two, three, or four years.

(g) Nothing in this section prevents deferred entry of judgment or a defendant's participation in a preguilty plea drug court program under Chapter 2.5 (commencing with Section 1000) of Title 6 of Part 2 of the Penal Code unless the person is charged with violating subdivision (b) or (c) of Section 243 of the Penal Code. A person charged with violating this section by being under the influence of any controlled substance which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section 11055 and with violating either subdivision (b) or (c) of Section 243 of the Penal Code or with a violation of subdivision (e) shall be ineligible for deferred entry of judgment or a preguilty plea drug court program.

SEC. 10. Section 11573.5 of the Health and Safety Code is amended to read:

11573.5. (a) At the time of application for issuance of a temporary writ pursuant to Section 11573, if proof of the existence of the nuisance depends, in whole or part, upon the affidavits of witnesses who are not peace officers, upon a showing of prior threats of violence or acts of violence by any defendant or other person, the court may issue orders to protect those witnesses, including, but not limited to, nondisclosure of the name, address, or any other information which may identify those witnesses.

(b) A temporary writ issued pursuant to Section 11573 may include closure of the premises pending trial when a prior writ does not result in the abatement of the nuisance. The duration of the writ shall be within the court's discretion. In no event shall the total period of closure pending trial exceed one year. Prior to ruling on a request for closure the court may order that some or all of the rent payments owing to the defendant be placed in an escrow account for a period of up to 90 days or until the nuisance is abated. If the court subsequently orders a closure of the premises, the money in the escrow account shall be used to pay for relocation assistance pursuant to subdivision (d). In ruling upon a request for closure, whether for a defined or undefined duration, the court shall consider all of the following factors:

(1) The extent and duration of the nuisance at the time of the request.

(2) Prior efforts by the defendant to comply with previous court orders to abate the nuisance.

(3) The nature and extent of any effect which the nuisance has upon other persons, such as residents or businesses.

(4) Any effect of prior orders placing displaced residents' or occupants' rent payments into an escrow account upon the defendant's efforts to abate the nuisance.

(5) The effect of granting the request upon any resident or occupant of the premises who is not named in the action, including the availability of alternative housing or relocation assistance, the pendency of any action to evict a resident or occupant, and any evidence of participation by a resident or occupant in the nuisance activity.

(c) In making an order of closure pursuant to this section, the court may order the premises vacated and may issue any other orders necessary to effectuate the closure. However, all tenants who may be affected by the order shall be provided reasonable notice and an opportunity to be heard at all hearings regarding the closure request prior to the issuance of any order.

(d) In making an order of closure pursuant to this section, the court shall order the defendant to provide relocation assistance to any tenant ordered to vacate the premises, provided the court determines that the tenant was not actively involved in the nuisance activity. The relocation assistance ordered to be paid by the defendant shall be in the amount

necessary to cover moving costs, security deposits for utilities and comparable housing, adjustment in any lost rent, and any other reasonable expenses the court may deem fair and reasonable as a result of the court's order.

(e) At the hearing to order closure pursuant to this section, the court may make the following orders with respect to any displaced tenant not actively involved in the nuisance:

(1) Priority for senior citizens, physically handicapped persons, or persons otherwise suffering from a permanent or temporary disability for claims against money for relocation assistance.

(2) Order the local agency seeking closure pursuant to this section to make reasonable attempts to seek additional sources of funds for relocation assistance to displaced tenants, if deemed necessary.

(3) Appoint a receiver to oversee the disbursement of relocation assistance funds, whose services shall be paid from the escrow fund.

(4) Where a defendant has paid relocation assistance pursuant to subdivision (d), the escrow account under subdivision (b) may be released to the defendant and no appointment under paragraph (3) shall be made.

(f) (1) The remedies set forth pursuant to this section shall be in addition to any other existing remedies for nuisance abatement actions, including, but not limited to, the following:

(A) Capital improvements to the property, such as security gates.

(B) Improved interior or exterior lighting.

(C) Security guards.

(D) Posting of signs.

(E) Owner membership in neighborhood or local merchants' associations.

(F) Attending property management training programs.

(G) Making cosmetic improvements to the property.

(2) At all stages of an action brought pursuant to this article, the court has equitable powers to order steps necessary to remedy the problem and enhance the abatement process.

SEC. 11. Section 42400.1 of the Health and Safety Code is amended to read:

42400.1. (a) Any person who negligently emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district pertaining to emission regulations or limitations is guilty of a misdemeanor and is punishable by a fine of not more than twenty-five thousand dollars ($25,000), or imprisonment in a county jail for not more than nine months, or by both that fine and imprisonment.

(b) Any person who negligently emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by Section

12022.7 of the Penal Code, to, or death of, any person, is guilty of a misdemeanor and is punishable by a fine of not more than one hundred thousand dollars ($100,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 12. Section 42400.2 of the Health and Safety Code is amended to read:

42400.2. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board or of a district pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is punishable by a fine of not more than forty thousand dollars ($40,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) For purposes of this section, ''corrective action'' means the termination of the emission violation or the grant of a variance from the applicable order, rule, regulation, or permit pursuant to Article 2 (commencing with Section 42350). If a district regulation regarding process upsets or equipment breakdowns would allow continued operation of equipment which is emitting air contaminants in excess of allowable limits, compliance with that regulation is deemed to be corrective action.

(c) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, and who knew of the emission and failed to take corrective action within a reasonable period of time under the circumstances, is guilty of a misdemeanor and is punishable by a fine of not more than two hundred fifty thousand dollars ($250,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(d) Each day during any portion of which a violation occurs constitutes a separate offense.

SEC. 13. Section 42400.3 of the Health and Safety Code is amended to read:

42400.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of any provision of this part or any rule, regulation, permit, or order of the state board or of a district, pertaining to emission regulations or limitations is guilty of a misdemeanor and is punishable by a fine of not more than seventy-five thousand dollars ($75,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that results in any unreasonable risk of great bodily injury to, or death of, any person, is guilty of a public offense and is punishable by a fine of not more than one hundred twenty-five thousand dollars ($125,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. However, if the defendant is a corporation, the maximum fine may be up to five hundred thousand dollars ($500,000).

(c) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person emits an air contaminant in violation of Section 41700 that causes great bodily injury to, or death of, any person is guilty of a public offense, and is punishable by a fine of not more than two hundred fifty thousand dollars ($250,000), or imprisonment in a county jail for not more than one year, or both that fine and imprisonment, or is punishable by a fine of not more than two hundred fifty thousand dollars ($250,000), or imprisonment in the state prison, or by both that fine and imprisonment. If the defendant is a corporation, the maximum fine may be up to one million dollars ($1,000,000).

(d) Each day during any portion of which a violation occurs constitutes a separate offense.

(e) This section does not preclude punishment under Section 189 or 192 of the Penal Code or any other provision of law that provides a more severe punishment.

(f) For the purposes of this section:

(1) ''Great bodily injury'' means great bodily injury as defined by Section 12022.7 of the Penal Code.

(2) ''Imprisonment in state prison'' means imprisonment in the state prison for 16 months, or two or three years.

(3) ''Unreasonable risk of great bodily injury or death'' means substantial probability of great bodily injury or death.

SEC. 14. Section 42402.1 of the Health and Safety Code is amended to read:

42402.1. (a) Any person who negligently emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board or of a district, including a district hearing board, pertaining to emission regulations or limitations is liable for a civil penalty of not more than twenty-five thousand dollars ($25,000).

(b) Any person who negligently emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to any person or that causes the death of any

person, is liable for a civil penalty of not more than one hundred thousand dollars ($100,000).

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 15. Section 42402.2 of the Health and Safety Code is amended to read:

42402.2. (a) Any person who emits an air contaminant in violation of any provision of this part, or any order, rule, regulation, or permit of the state board or of a district, including a district hearing board, pertaining to emission regulations or limitations, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 42400.2, within a reasonable period of time under the circumstances, is liable for a civil penalty of not more than forty thousand dollars ($40,000).

(b) Any person who owns or operates any source of air contaminants in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to any person or that causes the death of any person, and who knew of the emission and failed to take corrective action, as defined in subdivision (b) of Section 42400.2, within a reasonable period of time under the circumstances, is liable for a civil penalty not to exceed two hundred fifty thousand dollars ($250,000).

(c) Each day during any portion of which a violation occurs is a separate offense.

SEC. 16. Section 42402.3 of the Health and Safety Code is amended to read:

42402.3. (a) Any person who willfully and intentionally emits an air contaminant in violation of this part or any rule, regulation, permit, or order of the state board, or of a district, including a district hearing board, pertaining to emission regulations or limitations, is liable for a civil penalty of not more than seventy-five thousand dollars ($75,000).

(b) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that results in an unreasonable risk of great bodily injury to, or death of, any person, is liable for a civil penalty of not more than one hundred twenty-five thousand dollars ($125,000). If the violator is a corporation, the maximum penalty may be up to five hundred thousand dollars ($500,000).

(c) Any person who willfully and intentionally, or with reckless disregard for the risk of great bodily injury, as defined by Section 12022.7 of the Penal Code, to, or death of, any person, emits an air contaminant in violation of Section 41700 that causes great bodily injury, as defined by Section 12022.7 of the Penal Code, to any person

or that causes the death of any person, is liable for a civil penalty of not more than two hundred fifty thousand dollars ($250,000). If the violator is a corporation, the maximum penalty may be up to one million dollars ($1,000,000).

(d) Each day during any portion of which a violation occurs is a separate offense.

SEC. 17. Section 109580 of the Health and Safety Code is amended to read:

109580. Any person 18 years of age or over who violates Section 109575 by knowingly distributing an imitation controlled substance to a person under 18 years of age is guilty of a misdemeanor and shall, if convicted, be punished by imprisonment for not more than one year in a county jail or a fine of not more than two thousand dollars ($2,000), or by both that imprisonment and fine. Upon a second or subsequent conviction of this offense, the person shall be subject to imprisonment for not more than one year in a county jail and a fine of not less than six thousand dollars ($6,000).

SEC. 18. Section 28 of the Penal Code is amended to read:

28. (a) Evidence of mental disease, mental defect, or mental disorder shall not be admitted to show or negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged.

(b) As a matter of public policy there shall be no defense of diminished capacity, diminished responsibility, or irresistible impulse in a criminal action or juvenile adjudication hearing.

(c) This section shall not be applicable to an insanity hearing pursuant to Section 1026 or 1429.5.

(d) Nothing in this section shall limit a court's discretion, pursuant to the Evidence Code, to exclude psychiatric or psychological evidence on whether the accused had a mental disease, mental defect, or mental disorder at the time of the alleged offense.

SEC. 19. Section 113 of the Penal Code, as added by Chapter 17 of the Statutes of 1994, 1st Extraordinary Session, is amended and renumbered to read:

112. (a) Any person who manufactures or sells any false government document with the intent to conceal the true citizenship or resident alien status of another person is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for one year. Every false government document that is manufactured or sold in violation of

this section may be charged and prosecuted as a separate and distinct violation, and consecutive sentences may be imposed for each violation.

(b) A prosecuting attorney shall have discretion to charge a defendant with a violation of this section or any other law that applies.

(c) As used in this section, ''government document'' means any document issued by the United States government or any state or local government, including, but not limited to, any passport, immigration visa, employment authorization card, birth certificate, driver's license, identification card, or social security card.

SEC. 20. Section 182 of the Penal Code is amended to read:

182. (a) If two or more persons conspire:

(1) To commit any crime.

(2) Falsify and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime.

(3) Falsely to move or maintain any suit, action, or proceeding.

(4) To cheat and defraud any person of any property, by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform those promises.

(5) To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

(6) To commit any crime against the person of the President or Vice President of the United States, the Governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States.

They are punishable as follows:

When they conspire to commit any crime against the person of any official specified in paragraph (6), they are guilty of a felony and are punishable by imprisonment in the state prison for five, seven, or nine years.

When they conspire to commit any other felony, they shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony. If the felony is one for which different punishments are prescribed for different degrees, the jury or court which finds the defendant guilty thereof shall determine the degree of the felony the defendant conspired to commit. If the degree is not so determined, the punishment for conspiracy to commit the felony shall be that prescribed for the lesser degree, except in the case of conspiracy to commit murder, in which case the punishment shall be that prescribed for murder in the first degree.

If the felony is conspiracy to commit two or more felonies which have different punishments and the commission of those felonies constitute but one offense of conspiracy, the penalty shall be that prescribed for the felony which has the greater maximum term.

When they conspire to do an act described in paragraph (4), they shall be punishable by imprisonment in the state prison, or by imprisonment in the county jail for not more than one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

When they conspire to do any of the other acts described in this section, they shall be punishable by imprisonment in the county jail for not more than one year, or in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine.

All cases of conspiracy may be prosecuted and tried in the superior court of any county in which any overt act tending to effect the conspiracy shall be done.

(b) Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts are expressly alleged in the indictment or information, nor unless one of the acts alleged is proved; but other overt acts not alleged may be given in evidence.

SEC. 21. Section 186.11 of the Penal Code is amended to read:

186.11. (a) (1) Any person who commits two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, and the pattern of related felony conduct involves the taking of more than one hundred thousand dollars ($100,000), shall be punished, upon conviction of two or more felonies in a single criminal proceeding, in addition and consecutive to the punishment prescribed for the felony offenses of which he or she has been convicted, by an additional term of imprisonment in the state prison as specified in paragraph (2) or (3). This enhancement shall be known as the aggravated white collar crime enhancement. The aggravated white collar crime enhancement shall only be imposed once in a single criminal proceeding. For purposes of this section, ''pattern of related felony conduct'' means engaging in at least two felonies that have the same or similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics, and that are not isolated events. For purposes of this section, ''two or more related felonies'' means felonies committed against two or more separate victims, or against the same victim on two or more separate occasions.

(2) If the pattern of related felony conduct involves the taking of more than five hundred thousand dollars ($500,000), the additional term of punishment shall be two, three, or five years in the state prison.

(3) If the pattern of related felony conduct involves the taking of more than one hundred thousand dollars ($100,000), but not more than five hundred thousand dollars ($500,000), the additional term of punishment shall be the term specified in paragraph (1) or (2) of subdivision (a) of Section 12022.6.

(b) (1) The additional prison term and penalties provided for in subdivisions (a), (c), and (d) shall not be imposed unless the facts set forth in subdivision (a) are charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(2) The additional prison term provided in paragraph (2) of subdivision (a) shall be in addition to any other punishment provided by law, including Section 12022.6, and shall not be limited by any other provision of law.

(c) Any person convicted of two or more felonies, as specified in subdivision (a), shall also be liable for a fine not to exceed five hundred thousand dollars ($500,000) or double the value of the taking, whichever is greater, if the existence of facts that would make the person subject to the aggravated white collar crime enhancement have been admitted or found to be true by the trier of fact. However, if the pattern of related felony conduct involves the taking of more than one hundred thousand dollars ($100,000), but not more than five hundred thousand dollars ($500,000), the fine shall not exceed one hundred thousand dollars ($100,000) or double the value of the taking, whichever is greater.

(d) Any person convicted of two or more felonies, as specified in subdivision (a), shall be liable for the costs of restitution to victims of the pattern of fraudulent or unlawful conduct, if the existence of facts that would make the person subject to the aggravated white collar crime enhancement have been admitted or found to be true by the trier of fact.

(e) (1) If a person is alleged to have committed two or more felonies, as specified in subdivision (a), and the aggravated white collar crime enhancement is also charged, any asset or property that is in the control of that person, and any asset or property that has been transferred by that person to a third party, subsequent to the commission of any criminal act alleged pursuant to subdivision (a), other than in a bona fide purchase, whether found within or outside the state, may be preserved by the superior court in order to pay restitution and fines imposed pursuant to this section. Upon conviction of two or more felonies, as specified in subdivision (a), this property may be levied upon by the superior court to pay restitution and fines imposed pursuant to this section if the existence of facts that would make the person subject to the aggravated white collar crime enhancement have been admitted or found to be true by the trier of fact.

(2) To prevent dissipation or secreting of assets or property, the prosecuting agency may, at the same time as or subsequent to the filing of a complaint or indictment charging two or more felonies, as specified in subdivision (a), and the enhancement specified in subdivision (a), file a petition with the criminal division of the superior court of the county in which the accusatory pleading was filed, seeking a temporary restraining order, preliminary injunction, the appointment of a receiver,

or any other protective relief necessary to preserve the property or assets. This petition shall commence a proceeding that shall be pendent to the criminal proceeding and maintained solely to effect the criminal remedies provided for in this section. The proceeding shall not be subject to or governed by the provisions of the Civil Discovery Act of 1986 as set forth in Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure. The petition shall allege that the defendant has been charged with two or more felonies, as specified in subdivision (a), and is subject to the aggravated white collar crime enhancement specified in subdivision (a). The petition shall identify that criminal proceeding and the assets and property to be affected by an order issued pursuant to this section.

(3) A notice regarding the petition shall be provided, by personal service or registered mail, to every person who may have an interest in the property specified in the petition. Additionally, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property affected by an order issued pursuant to this section is located. The notice shall state that any interested person may file a verified claim with the superior court stating the nature and amount of their claimed interest. The notice shall set forth the time within which a claim of interest in the protected property is required to be filed.

(4) If the property to be preserved is real property, the prosecuting agency shall record, at the time of filing the petition, a lis pendens in each county in which the real property is situated which specifically identifies the property by legal description, the name of the owner of record as shown on the latest equalized assessment roll, and the assessor's parcel number.

(5) If the property to be preserved are assets under the control of a banking or financial institution, the prosecuting agency, at the time of the filing of the petition, may obtain an order from the court directing the banking or financial institution to immediately disclose the account numbers and value of the assets of the accused held by the banking or financial institution. The prosecuting agency shall file a supplemental petition, specifically identifying which banking or financial institution accounts shall be subject to a temporary restraining order, preliminary injunction, or other protective remedy.

(6) Any person claiming an interest in the protected property may, at any time within 30 days from the date of the first publication of the notice of the petition, or within 30 days after receipt of actual notice, file with the superior court of the county in which the action is pending a verified claim stating the nature and amount of his or her interest in the property or assets. A verified copy of the claim shall be served by the claimant on the Attorney General or district attorney, as appropriate.

(7) The imposition of fines and restitution pursuant to this section shall be determined by the superior court in which the underlying criminal offense is sentenced. Any judge who is assigned to the criminal division of the superior court in the county where the petition is filed may issue a temporary restraining order in conjunction with, or subsequent to, the filing of an allegation pursuant to this section. Any subsequent hearing on the petition shall also be heard by a judge assigned to the criminal division of the superior court in the county in which the petition is filed. At the time of the filing of an information or indictment in the underlying criminal case, any subsequent hearing on the petition shall be heard by the superior court judge assigned to the underlying criminal case.

(f) Concurrent with or subsequent to the filing of the petition, the prosecuting agency may move the superior court for, and the superior court may issue, the following pendente lite orders to preserve the status quo of the property alleged in the petition:

(1) An injunction to restrain any person from transferring, encumbering, hypothecating, or otherwise disposing of that property.

(2) Appointment of a receiver to take possession of, care for, manage, and operate the assets and properties so that the property may be maintained and preserved. The court may order that a receiver appointed pursuant to this section shall be compensated for all reasonable expenditures made or incurred by him or her in connection with the possession, care, management, and operation of any property or assets that are subject to the provisions of this section.

(3) A bond or other undertaking, in lieu of other orders, of a value sufficient to ensure the satisfaction of restitution and fines imposed pursuant to this section.

(g) (1) No preliminary injunction may be granted or receiver appointed by the court without notice that meets the requirements of paragraph (3) of subdivision (e) to all known and reasonably ascertainable interested parties and upon a hearing to determine that an order is necessary to preserve the property pending the outcome of the criminal proceedings. A temporary restraining order may be issued by the court, ex parte, pending that hearing in conjunction with or subsequent to the filing of the petition upon the application of the prosecuting attorney. The temporary restraining order may be based upon the sworn declaration of a peace officer with personal knowledge of the criminal investigation that establishes probable cause to believe that aggravated white collar crime has taken place and that the amount of restitution and fines established by this section exceeds or equals the worth of the assets subject to the temporary restraining order. The declaration may include the hearsay statements of witnesses to establish

the necessary facts. The temporary restraining order may be issued without notice upon a showing of good cause to the court.

(2) The defendant, or a person who has filed a verified claim as provided in paragraph (6) of subdivision (e), shall have the right to have the court conduct an order to show cause hearing within 10 days of the service of the request for hearing upon the prosecuting agency, in order to determine whether the temporary restraining order should remain in effect, whether relief should be granted from any lis pendens recorded pursuant to paragraph (4) of subdivision (e), or whether any existing order should be modified in the interests of justice. Upon a showing of good cause, the hearing shall be held within two days of the service of the request for hearing upon the prosecuting agency.

(3) In determining whether to issue a preliminary injunction or temporary restraining order in a proceeding brought by a prosecuting agency in conjunction with or subsequent to the filing of an allegation pursuant to this section, the court has the discretion to consider any matter that it deems reliable and appropriate, including hearsay statements, in order to reach a just and equitable decision. The court shall weigh the relative degree of certainty of the outcome on the merits and the consequences to each of the parties of granting the interim relief. If the prosecution is likely to prevail on the merits and the risk of the dissipation of assets outweighs the potential harm to the defendants and the interested parties, the court shall grant injunctive relief. The court shall give significant weight to the following factors:

(A) The public interest in preserving the property or assets pendente lite.

(B) The difficulty of preserving the property or assets pendente lite where the underlying alleged crimes involve issues of fraud and moral turpitude.

(C) The fact that the requested relief is being sought by a public prosecutor on behalf of alleged victims of white collar crimes.

(D) The likelihood that substantial public harm has occurred where aggravated white collar crime is alleged to have been committed.

(E) The significant public interest involved in compensating the victims of white collar crime and paying court imposed restitution and fines.

(4) The court, in making its orders, may consider a defendant's request for the release of a portion of the property affected by this section in order to pay reasonable legal fees in connection with the criminal proceeding, any necessary and appropriate living expenses pending trial and sentencing, and for the purpose of posting bail. The court shall weigh the needs of the public to retain the property against the needs of the defendant to a portion of the property. The court shall consider the factors

listed in paragraph (3) prior to making any order releasing property for these purposes.

(5) The court, in making its orders, shall seek to protect the interests of any innocent third persons, including an innocent spouse, who were not involved in the commission of any criminal activity.

(6) Any petition filed pursuant to this section is part of the criminal proceedings for purposes of appointment of counsel and shall be assigned to the criminal division of the superior court of the county in which the accusatory pleading was filed.

(7) Based upon a noticed motion brought by the receiver appointed pursuant to paragraph (2) of subdivision (f), the court may order an interlocutory sale of property named in the petition when the property is liable to perish, to waste, or to be significantly reduced in value, or when the expenses of maintaining the property are disproportionate to the value thereof. The proceeds of the interlocutory sale shall be deposited with the court or as directed by the court pending determination of the proceeding pursuant to this section.

(8) The court may make any orders that are necessary to preserve the continuing viability of any lawful business enterprise that is affected by the issuance of a temporary restraining order or preliminary injunction issued pursuant to this action.

(9) In making its orders, the court shall seek to prevent any asset subject to a temporary restraining order or preliminary injunction from perishing, spoiling, going to waste, or otherwise being significantly reduced in value. Where the potential for diminution in value exists, the court shall appoint a receiver to dispose of or otherwise protect the value of the property or asset.

(10) A preservation order shall not be issued against any assets of a business that are not likely to be dissipated and that may be subject to levy or attachment to meet the purposes of this section.

(h) If the allegation that the defendant is subject to the aggravated white collar crime enhancement is dismissed or found by the trier of fact to be untrue, any preliminary injunction or temporary restraining order issued pursuant to this section shall be dissolved. If a jury is the trier of fact, and the jury is unable to reach a unanimous verdict, the court shall have the discretion to continue or dissolve all or a portion of the preliminary injunction or temporary restraining order based upon the interests of justice. However, if the prosecuting agency elects not to retry the case, any preliminary injunction or temporary restraining order issued pursuant to this section shall be dissolved.

(i) (1) (A) If the defendant is convicted of two or more felonies, as specified in subdivision (a), and the existence of facts that would make the person subject to the aggravated white collar crime enhancement have been admitted or found to be true by the trier of fact, the trial judge

shall continue the preliminary injunction or temporary restraining order until the date of the criminal sentencing and shall make a finding at that time as to what portion, if any, of the property or assets subject to the preliminary injunction or temporary restraining order shall be levied upon to pay fines and restitution to victims of the crime. The order imposing fines and restitution may exceed the total worth of the property or assets subjected to the preliminary injunction or temporary restraining order. The court may order the immediate transfer of the property or assets to satisfy any judgment and sentence made pursuant to this section. Additionally, upon motion of the prosecution, the court may enter an order as part of the judgment and sentence making the order imposing fines and restitution pursuant to this section enforceable pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

(B) Additionally, the court shall order the defendant to make full restitution to the victim or to make restitution to the victim based on his or her ability to pay, as defined in subdivision (b) of Section 1203.1b. The payment of the restitution ordered by the court pursuant to this section shall be made a condition of any probation granted by the court if the existence of facts that would make the defendant subject to the aggravated white collar crime enhancement have been admitted or found to be true by the trier of fact. Notwithstanding any other provision of law, the court may order that the period of probation continue for up to 10 years or until full restitution is made to the victim, whichever is earlier.

(C) The sentencing court shall retain jurisdiction to enforce the order to pay additional fines and restitution and, in appropriate cases, may initiate probation violation proceedings or contempt of court proceedings against a defendant who is found to have willfully failed to comply with any lawful order of the court.

(D) If the execution of judgment is stayed pending an appeal of an order of the superior court pursuant to this section, the preliminary injunction or temporary restraining order shall be maintained in full force and effect during the pendency of the appellate period.

(2) The order imposing fines and restitution shall not affect the interest in real property of any third party that was acquired prior to the recording of the lis pendens, unless the property was obtained from the defendant other than as a bona fide purchaser for value. If any assets or property affected by this section are subject to a valid lien, mortgage, security interest, or interest under a conditional sales contract and the amount due to the holder of the lien, mortgage, interest, or contract is less than the appraised value of the property, that person may pay to the state or the local government that initiated the proceeding the amount of the difference between the appraised value of the property and the amount of the lien, mortgage, security interest, or interest under a conditional

sales contract. Upon that payment, the state or local entity shall relinquish all claims to the property. If the holder of the interest elects not to make that payment to the state or local governmental entity, the interest in the property shall be deemed transferred to the state or local governmental entity and any indicia of ownership of the property shall be confirmed in the state or local governmental entity. The appraised value shall be determined as of the date judgment is entered either by agreement between the holder of the lien, mortgage, security interest, or interest under a conditional sales contract and the governmental entity involved, or if they cannot agree, then by a court-appointed appraiser for the county in which the action is brought. A person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract shall be paid the appraised value of his or her interest.

(3) In making its final order, the court shall seek to protect the legitimately acquired interests of any innocent third persons, including an innocent spouse, who were not involved in the commission of any criminal activity.

(j) In all cases where property is to be levied upon pursuant to this section, a receiver appointed by the court shall be empowered to liquidate all property or assets which shall be distributed in the following order of priority:

(1) To the receiver, or court-appointed appraiser, for all reasonable expenditures made or incurred by him or her in connection with the sale of the property or liquidation of assets, including all reasonable expenditures for any necessary repairs, storage, or transportation of any property levied upon under this section.

(2) To any holder of a valid lien, mortgage, or security interest up to the amount of his or her interest in the property or proceeds.

(3) To any victim as restitution for any fraudulent or unlawful acts alleged in the accusatory pleading that were proven by the prosecuting agency as part of the pattern of fraudulent or unlawful acts.

(4) For payment of any fine imposed pursuant to this section. The proceeds obtained in payment of a fine shall be paid to the treasurer of the county in which the judgment was entered, or if the action was undertaken by the Attorney General, to the Treasurer. If the payment of any fine imposed pursuant to this section involved losses resulting from violation of Section 550 of this code or Section 1871.4 of the Insurance Code, one-half of the fine collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half of the fine collected shall be paid to the Department of Insurance for deposit in the appropriate account in the Insurance Fund. The proceeds from the fine first shall be used by a county to reimburse local prosecutors and enforcement agencies for the reasonable costs of investigation and prosecution of cases brought pursuant to this section.

(5) To the Restitution Fund, or in cases involving convictions relating to insurance fraud, to the Insurance Fund as restitution for crimes not specifically pleaded and proven in the accusatory pleading.

(k) If, after distribution pursuant to paragraphs (1) and (2) of subdivision (j), the value of the property to be levied upon pursuant to this section is insufficient to pay for restitution and fines, the court shall order an equitable sharing of the proceeds of the liquidation of the property, and any other recoveries, which shall specify the percentage of recoveries to be devoted to each purpose. At least 70 percent of the proceeds remaining after distribution pursuant to paragraphs (1) and (2) of subdivision (j) shall be devoted to restitution.

(*l*) Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this state, except that two separate actions against the same defendant and pertaining to the same fraudulent or unlawful acts may not be brought by a district attorney or the Attorney General pursuant to this section and Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code. If a fine is imposed under this section, it shall be in lieu of all other fines that may be imposed pursuant to any other provision of law for the crimes for which the defendant has been convicted in the action.

SEC. 22. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraphs (4) and (5), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished as follows:

(A) Except as provided in subparagraphs (B) and (C), the person shall be punished by an additional term of two, three, or four years at the court's discretion.

(B) If the felony is a serious felony, as defined in subdivision (c) of Section 1192.7, the person shall be punished by an additional term of five years.

(C) If the felony is a violent felony, as defined in subdivision (c) of Section 667.5, the person shall be punished by an additional term of 10 years.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

(3) The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentencing enhancements on the record at the time of the sentencing.

(4) Any person who is convicted of a felony enumerated in this paragraph committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced to an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

(A) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 3046, if the felony is any of the offenses enumerated in subparagraphs (B) or (C) of this paragraph.

(B) Imprisonment in the state prison for 15 years, if the felony is a home invasion robbery, in violation of subparagraph (A) of paragraph (1) of subdivision (a) of Section 213; carjacking, as defined in Section 215; a felony violation of Section 246; or a violation of Section 12022.55.

(C) Imprisonment in the state prison for seven years, if the felony is extortion, as defined in Section 519; or threats to victims and witnesses, as defined in Section 136.1.

(5) Except as provided in paragraph (4), any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the

direction of or in association with, any criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(e) As used in this chapter, ''pattern of criminal gang activity'' means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(8) The intimidation of witnesses and victims, as defined in Section 136.1.

(9) Grand theft, as defined in subdivision (a) or (c) of Section 487.

(10) Grand theft of any firearm, vehicle, trailer, or vessel.

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

(14) Money laundering, as defined in Section 186.10.

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

(17) Aggravated mayhem, as defined in Section 205.

(18) Torture, as defined in Section 206.

(19) Felony extortion, as defined in Sections 518 and 520.

(20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(21) Carjacking, as defined in Section 215.

(22) The sale, delivery, or transfer of a firearm, as defined in Section 12072.

(23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.

(24) Threats to commit crimes resulting in death or great bodily injury, as defined in Section 422.

(25) Theft and unlawful taking or driving of a vehicle, as defined in Section 10851 of the Vehicle Code.

(f) As used in this chapter, ''criminal street gang'' means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(g) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(h) Notwithstanding any other provision of law, for each person committed to the Youth Authority for a conviction pursuant to subdivision (a) or (b) of this section, the offense shall be deemed one for which the state shall pay the rate of 100 percent of the per capita institutional cost of the Department of Youth Authority, pursuant to Section 912.5 of the Welfare and Institutions Code.

(i) In order to secure a conviction, or sustain a juvenile petition, pursuant to subdivision (a), it is not necessary for the prosecution to prove that the person devotes all, or a substantial part of his or her time or efforts to the criminal street gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required.

SEC. 23. Section 186.26 of the Penal Code is amended to read:

186.26. (a) Any person who solicits or recruits another to actively participate in a criminal street gang, as defined in subdivision (f) of Section 186.22, with the intent that the person solicited or recruited participate in a pattern of criminal street gang activity, as defined in subdivision (e) of Section 186.22, or with the intent that the person solicited or recruited promote, further, or assist in any felonious conduct by members of the criminal street gang, shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(b) Any person who threatens another person with physical violence on two or more separate occasions within any 30-day period with the intent to coerce, induce, or solicit any person to actively participate in a criminal street gang, as defined in subdivision (f) of Section 186.22, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Any person who uses physical violence to coerce, induce, or solicit another person to actively participate in any criminal street gang, as defined in subdivision (f) of Section 186.22, or to prevent the person from leaving a criminal street gang, shall be punished by imprisonment in the state prison for three, four, or five years.

(d) If the person solicited, recruited, coerced, or threatened pursuant to subdivision (a), (b), or (c) is a minor, an additional term of three years shall be imposed in addition and consecutive to the penalty prescribed for a violation of any of these subdivisions.

(e) Nothing in this section shall be construed to limit prosecution under any other provision of law.

SEC. 24. Section 243.1 of the Penal Code is amended to read:

243.1. When a battery is committed against the person of a custodial officer as defined in Section 831 of the Penal Code, and the person committing the offense knows or reasonably should know that the victim is a custodial officer engaged in the performance of his or her duties, and the custodial officer is engaged in the performance of his or her duties, the offense shall be punished by imprisonment in the state prison.

SEC. 25. Section 312.1 of the Penal Code is amended to read:

312.1. In any prosecution for a violation of the provisions of this chapter or of Chapter 7.6 (commencing with Section 313), neither the prosecution nor the defense shall be required to introduce expert witness testimony concerning the obscene or harmful character of the matter or live conduct which is the subject of the prosecution. Any evidence which tends to establish contemporary community standards of appeal to prurient interest or of customary limits of candor in the description or representation of nudity, sex, or excretion, or which bears upon the question of significant literary, artistic, political, educational, or scientific value shall, subject to the provisions of the Evidence Code, be admissible when offered by either the prosecution or by the defense.

SEC. 26. Section 320.5 of the Penal Code is amended to read:

320.5. (a) Nothing in this chapter applies to any raffle conducted by an eligible organization as defined in subdivision (c) for the purpose of directly supporting beneficial or charitable purposes or financially supporting another private, nonprofit, eligible organization that performs beneficial or charitable purposes if the raffle is conducted in accordance with this section.

(b) For purposes of this section, ''raffle'' means a scheme for the distribution of prizes by chance among persons who have paid money for paper tickets that provide the opportunity to win these prizes, where all of the following are true:

(1) Each ticket is sold with a detachable coupon or stub, and both the ticket and its associated coupon or stub are marked with a unique and matching identifier.

(2) Winners of the prizes are determined by draw from among the coupons or stubs described in paragraph (1) that have been detached from all tickets sold for entry in the draw.

(3) The draw is conducted in California under the supervision of a natural person who is 18 years of age or older.

(4) (A) At least 90 percent of the gross receipts generated from the sale of raffle tickets for any given draw are used by the eligible organization conducting the raffle to benefit or provide support for beneficial or charitable purposes, or it may use those revenues to benefit another private, nonprofit organization, provided that an organization receiving these funds is itself an eligible organization as defined in subdivision (c). As used in this section, ''beneficial purposes'' excludes purposes that are intended to benefit officers, directors, or members, as defined by Section 5056 of the Corporations Code, of the eligible organization. In no event shall funds raised by raffles conducted pursuant to this section be used to fund any beneficial, charitable, or other purpose outside of California. This section does not preclude an eligible organization from using funds from sources other than the sale of raffle tickets to pay for the administration or other costs of conducting a raffle.

(B) An employee of an eligible organization who is a direct seller of raffle tickets shall not be treated as an employee for purposes of workers' compensation under Section 3351 of the Labor Code if the following conditions are satisfied:

(i) Substantially all of the remuneration (whether or not paid in cash) for the performance of the service of selling raffle tickets is directly related to sales rather than to the number of hours worked.

(ii) The services performed by the person are performed pursuant to a written contract between the seller and the eligible organization and the contract provides that the person will not be treated as an employee with

respect to the selling of raffle tickets for workers' compensation purposes.

(C) For purposes of this section, employees selling raffle tickets shall be deemed to be direct sellers as described in Section 650 of the Unemployment Insurance Code as long as they meet the requirements of that section.

(c) For purposes of this section, ''eligible organization'' means a private, nonprofit organization that has been qualified to conduct business in California for at least one year prior to conducting a raffle and is exempt from taxation pursuant to Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, 23701k, 23701*l*, 23701t, or 23701w of the Revenue and Taxation Code.

(d) Any person who receives compensation in connection with the operation of the raffle shall be an employee of the eligible organization that is conducting the raffle, and in no event may compensation be paid from revenues required to be dedicated to beneficial or charitable purposes.

(e) No raffle otherwise permitted under this section may be conducted by means of, or otherwise utilize, any gaming machine, apparatus, or device, whether or not that machine, apparatus, or device meets the definition of slot machine contained in Section 330a, 330b, or 330.1.

(f) No raffle otherwise permitted under this section may be conducted, nor may tickets for a raffle be sold, within an operating satellite wagering facility or racetrack inclosure licensed pursuant to the Horse Racing Law (Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code) or within a gambling establishment licensed pursuant to the Gambling Control Act (Chapter 5 (commencing with Section 19800) of Division 8 of the Business and Professions Code). A raffle may not be advertised, operated, or conducted in any manner over the Internet, nor may raffle tickets be sold, traded, or redeemed over the Internet. For purposes of this section, advertisement shall not be defined to include the announcement of a raffle on the Web site of the organization responsible for conducting the raffle.

(g) No individual, corporation, partnership, or other legal entity shall hold a financial interest in the conduct of a raffle, except the eligible organization that is itself authorized to conduct that raffle, and any private, nonprofit, eligible organizations receiving financial support from that charitable organization pursuant to subdivisions (a) and (b).

(h) (1) An eligible organization may not conduct a raffle authorized under this section, unless it registers annually with the Department of Justice. The department shall furnish a registration form via the Internet or upon request to eligible nonprofit organizations. The department shall, by regulation, collect only the information necessary to carry out

the provisions of this section on this form. This information shall include, but is not limited to, the following:

(A) The name and address of the eligible organization.

(B) The federal tax identification number, the corporate number issued by the Secretary of State, the organization number issued by the Franchise Tax Board, or the California charitable trust identification number of the eligible organization.

(C) The name and title of a responsible fiduciary of the organization.

(2) The department may require an eligible organization to pay an annual registration fee of ten dollars ($10) to cover the actual costs of the department to administer and enforce this section. The department may, by regulation, adjust the annual registration fee as needed to ensure that revenues willfully offset, but do not exceed, the actual costs incurred by the department pursuant to this section. The fee shall be deposited by the department into the General Fund.

(3) The department shall receive General Fund moneys for the costs incurred pursuant to this section subject to an appropriation by the Legislature.

(4) The department shall adopt regulations necessary to effectuate this section, including emergency regulations, pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(5) The department shall maintain an automated data base of all registrants. Each local law enforcement agency shall notify the department of any arrests or investigation that may result in an administrative or criminal action against a registrant. The department may audit the records and other documents of a registrant to ensure compliance with this section.

(6) Once registered, an eligible organization must file annually thereafter with the department a report that includes the following:

(A) The aggregate gross receipts from the operation of raffles.

(B) The aggregate direct costs incurred by the eligible organization from the operation of raffles.

(C) The charitable or beneficial purposes for which proceeds of the raffles were used, or identify the eligible recipient organization to which proceeds were directed, and the amount of those proceeds.

(7) The department shall annually furnish to registrants a form to collect this information.

(8) The registration and reporting provisions of this section do not apply to any religious corporation sole or other religious corporation or organization that holds property for religious purposes, to a cemetery corporation regulated under Chapter 19 of Division 3 of the Business and Professions Code, or to any committee as defined in Section 82013 that is required to and does file any statement pursuant to the provisions of

Article 2 (commencing with Section 84200) of Chapter 4 of Title 9, or to a charitable corporation organized and operated primarily as a religious organization, educational institution, hospital, or a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code.

(i) The department may take legal action against a registrant if it determines that the registrant has violated this section or any regulation adopted pursuant to this section, or that the registrant has engaged in any conduct that is not in the best interests of the public's health, safety, or general welfare. Any action taken pursuant to this subdivision does not prohibit the commencement of an administrative or criminal action by the Attorney General, a district attorney, city attorney, or county counsel.

(j) Each action and hearing conducted to deny, revoke, or suspend a registry, or other administrative action taken against a registrant shall be conducted pursuant to the Administrative Procedure Act (Chapters 4.5 and 5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The department may seek recovery of the costs incurred in investigating or prosecuting an action against a registrant or applicant in accordance with those procedures specified in Section 125.3 of the Business and Professions Code. A proceeding conducted under this subdivision is subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(k) The Department of Justice shall conduct a study and report to the Legislature by December 31, 2003, on the impact of this section on raffle practices in California. Specifically, the study shall include, but not be limited to, information on whether the number of raffles has increased, the amount of money raised through raffles and whether this amount has increased, whether there are consumer complaints, and whether there is increased fraud in the operation of raffles.

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

(m) A raffle shall be exempt from this section if it satisfies all of the following requirements:

(1) It involves a general and indiscriminate distributing of the tickets.

(2) The tickets are offered on the same terms and conditions as the tickets for which a donation is given.

(3) The scheme does not require any of the participants to pay for a chance to win.

SEC. 27. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent,

and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars ($6,000), or by both that fine and imprisonment, or in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft or embezzlement, with respect to the property of an elder or dependent adult, and who knows or reasonably should know that the victim is an elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years, when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400); and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in a county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(f) Any person who commits the false imprisonment of an elder or dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment in the state prison for two, three, or four years.

(g) As used in this section, ''elder'' means any person who is 65 years of age or older.

(h) As used in this section, ''dependent adult'' means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. ''Dependent adult'' includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, ''caretaker'' means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

SEC. 28. Section 466 of the Penal Code is amended to read:

466. Every person having upon him or her in his or her possession a picklock, crow, keybit, crowbar, screwdriver, vise grip pliers, water-pump pliers, slidehammer, slim jim, tension bar, lock pick gun, tubular lock pick, floor-safe door puller, master key, or other instrument or tool with intent feloniously to break or enter into any building, railroad car, aircraft, or vessel, trailer coach, or vehicle as defined in the Vehicle Code, or who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument named above so that the same

will fit or open the lock of a building, railroad car, aircraft, vessel, trailer coach, or vehicle as defined in the Vehicle Code, without being requested to do so by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing or having reason to believe that it is intended to be used in committing a misdemeanor or felony, is guilty of a misdemeanor. Any of the structures mentioned in Section 459 shall be deemed to be a building within the meaning of this section.

SEC. 29. Section 481.1 of the Penal Code is amended to read:

481.1. (a) Every person who counterfeits, forges, or alters any fare media designed to entitle the holder to a ride on vehicles of a public transportation system, as defined by Section 99211 of the Public Utilities Code, or on vehicles operated by entities subsidized by the Department of Transportation is punishable by imprisonment in a county jail, not exceeding one year, or in the state prison.

(b) Every person who knowingly possesses any counterfeit, forged, or altered fare media designed to entitle the holder to a ride on vehicles of a public transportation system, as defined by Section 99211 of the Public Utilities Code, or on vehicles operated by entities subsidized by the Department of Transportation, or who utters, publishes, or puts into circulation any fare media with intent to defraud is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

SEC. 30. Section 530.7 of the Penal Code is amended to read:

530.7. (a) In order for a victim of identity theft to be included in the data base established pursuant to subdivision (c), he or she shall submit to the Department of Justice a court order obtained pursuant to any provision of law, a full set of fingerprints, and any other information prescribed by the department.

(b) Upon receiving information pursuant to subdivision (a), the Department of Justice shall verify the identity of the victim against any driver's license or other identification record maintained by the Department of Motor Vehicles.

(c) The Department of Justice shall establish and maintain a data base of individuals who have been victims of identity theft. The department shall provide a victim of identity theft or his or her authorized representative access to the data base in order to establish that the individual has been a victim of identity theft. Access to the data base shall be limited to criminal justice agencies, victims of identity theft, and individuals and agencies authorized by the victims.

(d) The Department of Justice shall establish and maintain a toll-free telephone number to provide access to information under subdivision (c).

(e) This section shall be operative September 1, 2001.

SEC. 31. Section 593d of the Penal Code is amended to read:

593d. (a) Except as provided in subdivision (e), any person who, for the purpose of intercepting, receiving, or using any program or other service carried by a multichannel video or information services provider that the person is not authorized by that provider to receive or use, commits any of the following acts is guilty of a public offense:

(1) Knowingly and willfully makes or maintains an unauthorized connection or connections, whether physically, electrically, electronically, or inductively, to any cable, wire, or other component of a multichannel video or information services provider's system or to a cable, wire or other media, or receiver that is attached to a multichannel video or information services provider's system.

(2) Knowingly and willfully purchases, possesses, attaches, causes to be attached, assists others in attaching, or maintains the attachment of any unauthorized device or devices to any cable, wire, or other component of a multichannel video or information services provider's system or to a cable, wire or other media, or receiver that is attached to a multichannel video or information services provider's system.

(3) Knowingly and willfully makes or maintains any modification or alteration to any device installed with the authorization of a multichannel video or information services provider.

(4) Knowingly and willfully makes or maintains any modifications or alterations to an access device that authorizes services or knowingly and willfully obtains an unauthorized access device and uses the modified, altered, or unauthorized access device to obtain services from a multichannel video or information services provider.

For purposes of this section, each purchase, possession, connection, attachment, or modification shall constitute a separate violation of this section.

(b) Except as provided in subdivision (e), any person who knowingly and willfully manufactures, assembles, modifies, imports into this state, distributes, sells, offers to sell, advertises for sale, or possesses for any of these purposes, any device or kit for a device, designed, in whole or in part, to decrypt, decode, descramble, or otherwise make intelligible any encrypted, encoded, scrambled, or other nonstandard signal carried by a multichannel video or information services provider, unless the device has been granted an equipment authorization by the Federal Communications Commission (FCC), is guilty of a public offense.

For purposes of this subdivision, ''encrypted, encoded, scrambled, or other nonstandard signal'' means any type of signal or transmission that is not intended to produce an intelligible program or service without the use of a special device, signal, or information provided by the

multichannel video or information services provider or its agents to authorized subscribers.

(c) Every person who knowingly and willfully makes or maintains an unauthorized connection or connections with, whether physically, electrically, electronically, or inductively, or who attaches, causes to be attached, assists others in attaching, or maintains any attachment to, any cable, wire, or other component of a multichannel video or information services provider's system, for the purpose of interfering with, altering, or degrading any multichannel video or information service being transmitted to others, or for the purpose of transmitting or broadcasting any program or other service not intended to be transmitted or broadcast by the multichannel video or information services provider, is guilty of a public offense.

For purposes of this section, each transmission or broadcast shall constitute a separate violation of this section.

(d) (1) Any person who violates subdivision (a) shall be punished by a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding 90 days, or by both that fine and imprisonment.

(2) Any person who violates subdivision (b) shall be punished as follows:

(A) If the violation involves the manufacture, assembly, modification, importation into this state, distribution, advertisement for sale, or possession for sale or for any of these purposes, of 10 or more of the items described in subdivision (b), or the sale or offering for sale of five or more items for financial gain, the person shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison, by a fine not exceeding two hundred fifty thousand dollars ($250,000), or by both that imprisonment and fine.

(B) If the violation involves the manufacture, assembly, modification, importation into this state, distribution, advertisement for sale, or possession for sale or for any of these purposes, of nine or less of the items described in subdivision (b), or the sale or offering for sale of four or less items for financial gain, shall upon a conviction of a first offense, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding twenty-five thousand dollars ($25,000), or by both that imprisonment and fine. A second or subsequent conviction shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison, by a fine not exceeding one hundred thousand dollars ($100,000), or by both that imprisonment and fine.

(3) Any person who violates subdivision (c) shall be punished by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in a county jail, or by both that fine and imprisonment.

(e) Any device or kit described in subdivision (a) or (b) seized under warrant or incident to a lawful arrest, upon the conviction of a person for a violation of subdivision (a) or (b), may be destroyed as contraband by the sheriff.

(f) Any person who violates this section shall be liable in a civil action to the multichannel video or information services provider for the greater of the following amounts:

(1) Five thousand dollars ($5,000).

(2) Three times the amount of actual damages, if any, sustained by the plaintiff plus reasonable attorney's fees.

A defendant who prevails in the action shall be awarded his or her reasonable attorney's fees.

(g) Any multichannel video or information services provider may, in accordance with the provisions of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any violation of this section, and may in the same action seek damages as provided in subdivision (f).

(h) It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.

(i) For the purposes of this section, a ''multichannel video or information services provider'' means a franchised or otherwise duly licensed cable television system, video dialtone system, Multichannel Multipoint Distribution Service system, Direct Broadcast Satellite system, or other system providing video or information services that are distributed via cable, wire, radio frequency, or other media. A video dialtone system is a platform operated by a public utility telephone corporation for the transport of video programming as authorized by the Federal Communications Commission pursuant to FCC Docket No. 87-266, and any subsequent decisions related to that docket, subject to any rules promulgated by the FCC pursuant to those decisions.

SEC. 32. Section 593e of the Penal Code is amended to read:

593e. (a) Every person who knowingly and willfully makes or maintains an unauthorized connection or connections, whether physically, electrically, or inductively, or purchases, possesses, attaches, causes to be attached, assists others in or maintains the attachment of any unauthorized device or devices to a television set or to other equipment designed to receive a television broadcast or transmission, or makes or maintains any modification or alteration to any device installed with the authorization of a subscription television system, for the purpose of intercepting, receiving, or using any program or other service carried by the subscription television system which the person is not authorized by that subscription television system to receive or use, is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars

($1,000), or by imprisonment in a county jail not exceeding 90 days, or by both that fine and imprisonment. For the purposes of this section, each purchase, possession, connection, attachment or modification shall constitute a separate violation of this section.

(b) Every person who, without the express authorization of a subscription television system, knowingly and willfully manufactures, imports into this state, assembles, distributes, sells, offers to sell, possesses, advertises for sale, or otherwise provides any device, any plan, or any kit for a device or for a printed circuit, designed in whole or in part to decode, descramble, intercept, or otherwise make intelligible any encoded, scrambled, or other nonstandard signal carried by that subscription television system, is guilty of a misdemeanor punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in a county jail, or by both that fine and imprisonment. A second or subsequent conviction is punishable by a fine not exceeding twenty thousand dollars ($20,000), or by imprisonment in a county jail for up to one year, or by both that fine and imprisonment.

(c) Any person who violates the provisions of subdivision (a) shall be liable to the subscription television system for civil damages in the amount of the value of the connection and subscription fees service actually charged by the subscription television system for the period of unauthorized use according to proof.

Any person who violates the provisions of subdivision (b) shall be liable to the subscription television system at the election of the subscription television system for either of the following amounts:

(1) An award of statutory damages in an aggregate amount of not less than five hundred dollars ($500) or more than ten thousand dollars ($10,000), as the court deems just, for each device, plan, or kit for a device, or for a printed circuit manufactured, imported, assembled, sold, offered for sale, possessed, advertised for sale, or otherwise provided in violation of subdivision (b), to be awarded instead of actual damages and profits.

(2) Three times the amount of actual damages sustained by the plaintiff as a result of the violation or violations of this section and any revenues which have been obtained by the defendant as a result of the violation or violations, or an amount equal to three times the value of the services unlawfully obtained, or the sum of five hundred dollars ($500) for each unauthorized device manufactured, sold, used, or distributed, whichever is greater, and, when appropriate, punitive damages. For the purposes of this subdivision, revenues which have been obtained by the defendant as a result of a violation or violations of this section shall not be included in computing actual damages.

In a case where the court finds that any activity set forth in subdivision (b) was committed knowingly and willfully and for purposes of

commercial advantage or private financial gain, the court in its discretion may increase the award of damages, whether actual or statutory, by an amount of not more than fifty thousand dollars ($50,000). It shall not constitute a use for ''commercial advantage or private financial gain'' for any person to receive a subscription television signal within a residential unit as defined herein.

(d) In any civil action filed pursuant to this section, the court shall allow the recovery of full costs plus an award of reasonable attorney's fees to the prevailing party.

(e) Any subscription television system may, in accordance with the provisions of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any violation of this section without having to make a showing of special or irreparable damage, and may in the same action seek damages as provided in subdivision (c). Upon the execution of a proper bond against damages for an injunction improvidently granted, a temporary restraining order or a preliminary injunction may be issued in any action before a final determination on the merits.

(f) It is not necessary that the plaintiff have incurred actual damages, or be threatened with incurring actual damages, as a prerequisite to bringing an action pursuant to this section.

(g) For the purposes of this section, an encoded, scrambled, or other nonstandard signal shall include, without limitation, any type of distorted signal or transmission that is not intended to produce an intelligible program or service without the use of special devices or information provided by the sender for the receipt of this type of signal or transmission.

(h) (1) For the purposes of this section, a ''subscription television system'' means a television system which sends an encoded, scrambled, or other nonstandard signal over the air which is not intended to be received in an intelligible form without special equipment provided by or authorized by the sender.

(2) For purposes of this section, ''residential unit'' is defined as any single-family residence, mobilehome within a mobilehome park, condominium, unit or an apartment or multiple-housing unit leased or rented for residential purposes.

SEC. 33. Section 597.2 of the Penal Code, as added by Chapter 1061 of the Statutes of 2000, is amended and renumbered to read:

597.3. (a) Every person who operates a live animal market shall do all of the following:

(1) Provide that no animal will be dismembered, flayed, cut open, or have its skin, scales, feathers, or shell removed while the animal is still alive.

(2) Provide that no live animals will be confined, held, or displayed in a manner that results, or is likely to result, in injury, starvation, dehydration, or suffocation.

(b) As used in this section:

(1) ''Animal'' means frogs, turtles, and birds sold for the purpose of human consumption, with the exception of poultry.

(2) ''Live animal market'' means a retail food market where, in the regular course of business, animals are stored alive and sold to consumers for the purpose of human consumption.

(c) Any person who fails to comply with any requirement of subdivision (a) shall for the first violation, be given a written warning in a written language that is understood by the person receiving the warning. A second or subsequent violation of subdivision (a) shall be an infraction, punishable by a fine of not less than two hundred fifty dollars ($250), nor more than one thousand dollars ($1,000). However, a fine paid for a second violation of subdivision (a) shall be deferred for six months if a course is available that is administered by a state or local agency on state law and local ordinances relating to live animal markets. If the defendant successfully completes that course within six months of entry of judgment, the fine shall be waived. The state or local agency may charge the participant a fee to take the course, not to exceed one hundred dollars ($100).

SEC. 34. Section 645 of the Penal Code is amended to read:

645. (a) Any person guilty of a first conviction of any offense specified in subdivision (c), where the victim has not attained 13 years of age, may, upon parole, undergo medroxyprogesterone acetate treatment or its chemical equivalent, in addition to any other punishment prescribed for that offense or any other provision of law, at the discretion of the court.

(b) Any person guilty of a second conviction of any offense specified in subdivision (c), where the victim has not attained 13 years of age, shall, upon parole, undergo medroxyprogesterone acetate treatment or its chemical equivalent, in addition to any other punishment prescribed for that offense or any other provision of law.

(c) This section shall apply to the following offenses:

(1) Subdivision (c) or (d) of Section 286.

(2) Paragraph (1) of subdivision (b) of Section 288.

(3) Subdivision (c) or (d) of Section 288a.

(4) Subdivision (a) or (j) of Section 289.

(d) The parolee shall begin medroxyprogesterone acetate treatment one week prior to his or her release from confinement in the state prison or other institution and shall continue treatments until the Department of Corrections demonstrates to the Board of Prison Terms that this treatment is no longer necessary.

(e) If a person voluntarily undergoes a permanent, surgical alternative to hormonal chemical treatment for sex offenders, he or she shall not be subject to this section.

(f) The Department of Corrections shall administer this section and implement the protocols required by this section. Nothing in the protocols shall require an employee of the Department of Corrections who is a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or the Osteopathic Initiative Act to participate against his or her will in the administration of the provisions of this section. These protocols shall include, but not be limited to, a requirement to inform the person about the effect of hormonal chemical treatment and any side effects that may result from it. A person subject to this section shall acknowledge the receipt of this information.

SEC. 35. Section 646.93 of the Penal Code is amended to read:

646.93. (a) (1) In those counties where the arrestee is initially incarcerated in a jail operated by the county sheriff, the sheriff shall designate a telephone number that shall be available to the public to inquire about bail status or to determine if the person arrested has been released and if not yet released, the scheduled release date, if known. This subdivision does not require a county sheriff or jail administrator to establish a new telephone number but shall require that the information contained on the victim resource card, as defined in Section 264.2, specify the phone number that a victim should call to obtain this information. This subdivision shall not require the county sheriff or municipal police departments to produce new victim resource cards containing a designated phone number for the public to inquire about the bail or custody status of a person who has been arrested until their existing supply of victim resource cards has been exhausted.

(2) In those counties where the arrestee is initially incarcerated in an incarceration facility other than a jail operated by the county sheriff and in those counties that do not operate a Victim Notification (VNE) system, a telephone number shall be available to the public to inquire about bail status or to determine if the person arrested has been released and if not yet released, the scheduled release date, if known. This subdivision does not require a municipal police agency or jail administrator to establish a new telephone number but shall require that the information contained on the victim resource card, as defined in Section 264.2, specify the phone number that a victim should call to obtain this information. This subdivision shall not require the county sheriff or municipal police departments to produce new victim resource cards containing a designated phone number for the public to inquire about the bail or custody status of a person who has been arrested until their existing supply of victim resource cards has been exhausted.

(3) If an arrestee is transferred to another incarceration facility and is no longer in the custody of the initial arresting agency, the transfer date and new incarceration location shall be made available through the telephone number designated by the arresting agency.

(4) The resource card provided to victims pursuant to Section 264.2 shall list the designated telephone numbers to which this section refers.

(b) Any request to lower bail shall be heard in open court in accordance with Section 1270.1. In addition, the prosecutor shall make all reasonable efforts to notify the victim or victims of the bail hearing. The victims may be present at the hearing and shall be permitted to address the court on the issue of bail.

(c) Unless good cause is shown not to impose the following conditions, the judge shall impose as additional conditions of release on bail that:

(1) The defendant shall not initiate contact in person, by telephone, or any other means with the alleged victims.

(2) The defendant shall not knowingly go within 100 yards of the alleged victims, their residence, or place of employment.

(3) The defendant shall not possess any firearms or other deadly or dangerous weapons.

(4) The defendant shall obey all laws.

(5) The defendant, upon request at the time of his or her appearance in court, shall provide the court with an address where he or she is residing or will reside, a business address and telephone number if employed, and a residence telephone number if the defendant's residence has a telephone.

A showing by declaration that any of these conditions are violated shall, unless good cause is shown, result in the issuance of a no-bail warrant.

SEC. 36. Section 666.7 of the Penal Code is amended to read:

666.7. It is the intent of the Legislature that this section serve merely as a nonsubstantive comparative reference of current sentence enhancement provisions. Nothing in this section shall have any substantive effect on the application of any sentence enhancement contained in any provision of law, including, but not limited to, all of the following: omission of any sentence enhancement provision, inclusion of any obsolete sentence enhancement provision, or inaccurate reference or summary of a sentence enhancement provision.

It is the intent of the Legislature to amend this section as necessary to accurately reflect current sentence enhancement provisions, including the addition of new provisions and the deletion of obsolete provisions.

For the purposes of this section, the term ''sentence enhancement'' means an additional term of imprisonment in the state prison added to the base term for the underlying offense. A sentence enhancement is

imposed because of the nature of the offense at the time the offense was committed or because the defendant suffered a qualifying prior conviction before committing the current offense.

(a) The provisions listed in this subdivision imposing a sentence enhancement of one year imprisonment in the state prison may be referenced as Schedule A.

(1) Money laundering when the value of transactions exceeds fifty thousand dollars ($50,000), but is less than one hundred fifty thousand dollars ($150,000) (subpara. (A), para. (1), subd. (c), Sec. 186.10, Pen. C.).

(2) Commission of two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, involving the taking of more than one hundred thousand dollars ($100,000) (para. (3), subd. (a), Sec. 186.11, Pen. C.).

(3) Felony conviction of willful harm or injury to a child, involving female genital mutilation (subd. (a), Sec. 273.4, Pen. C.).

(4) Prior conviction of felony hate crime with a current conviction of felony hate crime (subd. (e), Sec. 422.75, Pen. C.).

(5) Harming, obstructing, or interfering with any horse or dog being used by any peace officer in the discharge or attempted discharge of his or her duties and, with the intent to so harm, obstruct, or interfere, personally causing the death, destruction, or serious physical injury of any horse or dog (subd. (c), Sec. 600, Pen. C.).

(6) Prior prison term with current felony conviction (subd. (b), Sec. 667.5, Pen. C.).

(7) Commission of any specified offense against a person who is 65 years of age or older, blind, a paraplegic or quadriplegic, or under 14 years of age (subd. (a), Sec. 667.9, Pen. C.).

(8) Showing child pornography to a minor prior to or during the commission or attempted commission of any lewd or lascivious act with the minor (subd. (a), Sec. 667.15, Pen. C.).

(9) Felony conviction of forgery, grand theft, or false pretenses as part of plan or scheme to defraud an owner in connection with repairs to a structure damaged by a natural disaster (subd. (a), Sec. 667.16, Pen. C.).

(10) Impersonating a peace officer during the commission of a felony (Sec. 667.17, Pen. C.).

(11) Felony conviction of any specified offense, including, but not limited to, forgery, grand theft, and false pretenses, as part of plan or scheme to defraud an owner in connection with repairs to a structure damaged by natural disaster with a prior felony conviction of any of those offenses (subd. (c), Sec. 670, Pen. C.).

(12) Commission or attempted commission of a felony while armed with a firearm (para. (1), subd. (a), Sec. 12022, Pen. C.).

(13) Personally using a deadly or dangerous weapon in the commission or attempted commission of a felony (para. (1), subd. (b), Sec. 12022, Pen. C.).

(14) Taking, damaging, or destroying any property in the commission or attempted commission of a felony with the intent to cause that taking, damage, or destruction when the loss exceeds fifty thousand dollars ($50,000) (para. (1), subd. (a), Sec. 12022.6, Pen. C.).

(15) Transferring, lending, selling, or giving any assault weapon to a minor (para. (2), subd. (a), Sec. 12280, Pen. C.).

(16) Manufacturing, causing to be manufactured, distributing, transporting, importing, keeping for sale, offering or exposing for sale, giving, or lending any assault weapon while committing another crime (subd. (e), Sec. 12280, Pen. C.).

(17) Inducing, employing, or using a minor to commit a drug offense involving heroin, cocaine, or cocaine base, or unlawfully furnishing one of these controlled substances to a minor, upon the grounds of, or within, a church, playground, youth center, child day care facility, or public swimming pool during business hours or whenever minors are using the facility (para. (1), subd. (a), Sec. 11353.1, H.& S.C.).

(18) Inducing another person to commit a drug offense as part of the drug transaction for which the defendant is convicted when the value of the controlled substance involved exceeds five hundred thousand dollars ($500,000) (para. (1), subd. (a), Sec. 11356.5, H.& S.C.).

(19) Manufacturing, compounding, converting, producing, deriving, processing, or preparing methamphetamine or phencyclidine (PCP), or attempting to commit any of those acts, or possessing specified combinations of substances with the intent to manufacture either methamphetamine or phencyclidine (PCP), when the commission or attempted commission of the offense causes the death or great bodily injury of another person other than an accomplice (subd. (a), Sec. 11379.9, H.& S.C.).

(20) Using a minor to commit a drug offense involving phencyclidine (PCP), methamphetamine, or lysergic acid diethylamide (LSD), or unlawfully furnishing one of these controlled substances to a minor, when the commission of the offense occurs upon the grounds of, or within, a church, playground, youth center, child day care facility, or public swimming pool during business hours or whenever minors are using the facility (para. (1), subd. (a), Sec. 11380.1, H.& S.C.).

(21) Possessing for sale, or selling, heroin, cocaine, cocaine base, methamphetamine, or phencyclidine (PCP), when the commission of the offense occurs upon the grounds of a public park, public library, or oceanfront beach (para. (1), subd. (a), Sec. 11380.5, H.& S.C.).

(22) Causing bodily injury or death to more than one victim in any one instance of driving under the influence of any alcoholic beverage or drug (Sec. 23558, Veh. C.).

(23) Fraudulently appropriating food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program entrusted to a public employee, or knowingly using, transferring, selling, purchasing, or possessing any of the same in an unauthorized manner, when the offense is committed by means of an electronic transfer of benefits in an amount exceeding fifty thousand dollars ($50,000), but less than one hundred fifty thousand dollars ($150,000) (subpara. (A), para. (1), subd. (h), Sec. 10980, W.& I.C.).

(b) The provisions listed in this subdivision imposing a sentence enhancement of one, two, or three years' imprisonment in the state prison may be referenced as Schedule B.

(1) Commission or attempted commission of a felony hate crime (subd. (a), Sec. 422.75, Pen. C.).

(2) Commission or attempted commission of a felony against the property of a public or private institution because the property is associated with a person or group of identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation (subd. (b), Sec. 422.75, Pen. C.).

(3) Felony conviction of unlawfully causing a fire of any structure, forest land, or property when the defendant has been previously convicted of arson or unlawfully causing a fire, or when a firefighter, peace officer, or emergency personnel suffered great bodily injury, or when the defendant proximately caused great bodily injury to more than one victim, or caused multiple structures to burn (subd. (a), Sec. 452.1, Pen. C.).

(4) Carrying a loaded or unloaded firearm during the commission or attempted commission of any felony street gang crime (subd. (a), Sec. 12021.5, Pen. C.).

(5) Personally using a deadly or dangerous weapon in the commission of carjacking or attempted carjacking (para. (2), subd. (b), Sec. 12022, Pen. C.).

(6) Being a principal in the commission or attempted commission of any specified drug offense, knowing that another principal is personally armed with a firearm (subd. (d), Sec. 12022, Pen. C.).

(7) Furnishing or offering to furnish a firearm to another for the purpose of aiding, abetting, or enabling that person or any other person to commit a felony (Sec. 12022.4, Pen. C.).

(8) Selling, supplying, delivering, or giving possession or control of a firearm to any person within a prohibited class or to a minor when the firearm is used in the subsequent commission of a felony (para. (4), subd. (g), Sec. 12072, Pen. C.).

(9) Inducing, employing, or using a minor who is at least four years younger than the defendant to commit a drug offense involving any specified controlled substance, including, but not limited to, heroin, cocaine, and cocaine base, or unlawfully providing one of these controlled substances to a minor (para. (3), subd. (a), Sec. 11353.1, H.& S.C.).

(10) Prior conviction of inducing, employing, or using a minor to commit a drug offense involving cocaine base, or unlawfully providing cocaine base to a minor that resulted in a prison sentence with a current conviction of the same offense (subd. (a), Sec. 11353.4, H.& S.C.).

(11) Prior conviction of inducing, employing, or using a minor to commit a drug offense involving cocaine base, or unlawfully providing cocaine base to a minor with a current conviction of the same offense involving a minor who is 14 years of age or younger (subd. (b), Sec. 11353.4, H.& S.C.).

(12) Inducing, employing, or using a minor who is at least four years younger than the defendant to commit a drug offense involving any specified controlled substance, including, but not limited to, phencyclidine (PCP), methamphetamine, and lysergic acid diethylamide (LSD), or unlawfully providing one of these controlled substances to a minor (para. (3), subd. (a), Sec. 11380.1, H.& S.C.).

(13) Causing great bodily injury or a substantial probability that death could result by the knowing disposal, transport, treatment, storage, burning, or incineration of any hazardous waste at a facility without permits or at an unauthorized point (subd. (e), Sec. 25189.5, and subd. (c), Sec. 25189.7, H.& S.C.).

(c) The provisions listed in this subdivision imposing a sentence enhancement of one, two, or five years' imprisonment in the state prison may be referenced as Schedule C.

(1) Wearing a bullet-resistant body vest in the commission or attempted commission of a violent offense (subd. (b), Sec. 12022.2, Pen. C.).

(2) Commission or attempted commission of any specified sex offense while armed with a firearm or deadly weapon (subd. (b), Sec. 12022.3, Pen. C.).

(d) The provisions listed in this subdivision imposing a sentence enhancement of 16 months, or two or three years' imprisonment in the state prison may be referenced as Schedule D.

(1) Knowing failure to register pursuant to Section 186.30 and subsequent conviction or violation of Section 186.30, as specified (para. (1), subd. (b), Sec. 186.33, Pen. C.).

(e) The provisions listed in this subdivision imposing a sentence enhancement of two years' imprisonment in the state prison may be referenced as Schedule E.

(1) Money laundering when the value of the transactions exceeds one hundred fifty thousand dollars ($150,000), but is less than one million dollars ($1,000,000) (subpara. (B), para. (1), subd. (c), Sec. 186.10, Pen. C.).

(2) Commission of two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, involving the taking of more than one hundred fifty thousand dollars ($150,000) (para. (3), subd. (a), Sec. 186.11, Pen. C.).

(3) Conviction of any specified felony sex offense that is committed after fleeing to this state under specified circumstances (subd. (d), Sec. 289.5, Pen. C.).

(4) Prior conviction of any specified insurance fraud offense with current conviction of willfully injuring, destroying, secreting, abandoning, or disposing of any property insured against loss or damage by theft, embezzlement, or any casualty with the intent to defraud or prejudice the insurer (subd. (b), Sec. 548, Pen. C.).

(5) Prior conviction of any specified insurance fraud offense with current conviction of knowingly presenting any false or fraudulent insurance claim or multiple claims for the same loss or injury, or knowingly causing or participating in a vehicular collision for the purpose of presenting any false or fraudulent claim, or providing false or misleading information or concealing information for purpose of insurance fraud (subd. (e), Sec. 550, Pen. C.).

(6) Causing serious bodily injury as a result of knowingly causing or participating in a vehicular collision or accident for the purpose of presenting any false or fraudulent claim (subd. (g), Sec. 550, Pen. C.).

(7) Harming, obstructing, or interfering with any horse or dog being used by any peace officer in the discharge or attempted discharge of his or her duties and, with the intent to cause great bodily injury, personally causing great bodily injury to any person other than an accomplice (subd. (d), Sec. 600, Pen. C.).

(8) Prior conviction of any specified offense with current conviction of any of those offenses committed against a person who is 65 years of age or older, blind, a paraplegic or quadriplegic, or under 14 years of age (subd. (b), Sec. 667.9, Pen. C.).

(9) Prior conviction for sexual penetration with current conviction of the same offense committed against a person who is 65 years of age or older, blind, deaf, developmentally disabled, a paraplegic or quadriplegic, or under 14 years of age (subd. (a), Sec. 667.10, Pen. C.).

(10) Showing child pornography to a minor prior to or during the commission or attempted commission of continuous sexual abuse of the minor (subd. (b), Sec. 667.15, Pen. C.).

(11) Primary care provider in a day care facility committing any specified felony sex offense against a minor entrusted to his or her care (subd. (a), Sec. 674, Pen. C.).

(12) Commission of a felony offense while released from custody on bail or own recognizance (subd. (b), Sec. 12022.1, Pen. C.).

(13) Taking, damaging, or destroying any property in the commission or attempted commission of a felony with the intent to cause that taking, damage, or destruction when the loss exceeds one hundred fifty thousand dollars ($150,000) (para. (2), subd. (a), Sec. 12022.6, Pen. C.).

(14) Inducing, employing, or using a minor to commit a drug offense involving heroin, cocaine, or cocaine base, or unlawfully furnishing one of these controlled substances to a minor, upon, or within 1,000 feet of, the grounds of a school during school hours or whenever minors are using the facility (para. (2), subd. (a), Sec. 11353.1, H.& S.C.).

(15) Inducing another person to commit a drug offense as part of the drug transaction for which the defendant is convicted when the value of the controlled substance involved exceeds two million dollars ($2,000,000) (para. (2), subd. (a), Sec. 11356.5, H.& S.C.).

(16) Manufacturing, compounding, converting, producing, deriving, processing, or preparing methamphetamine or phencyclidine (PCP), or attempting to commit any of those acts, or possessing specified combinations of substances with the intent to manufacture either methamphetamine or phencyclidine (PCP), when the commission or attempted commission of the crime occurs in a structure where any child under 16 years of age is present (subd. (a), Sec. 11379.7, H.& S.C.).

(17) Using a minor to commit a drug offense involving phencyclidine (PCP), methamphetamine, or lysergic acid diethylamide (LSD), or unlawfully furnishing one of these controlled substances to a minor, upon, or within 1,000 feet of, the grounds of a school during school hours or whenever minors are using the facility (para. (2), subd. (a), Sec. 11380.1, H.& S.C.).

(18) Prior felony conviction of any specified insurance fraud offense with a current conviction of making false or fraudulent statements concerning a workers' compensation claim (subd. (c), Sec. 1871.4, Ins. C.).

(19) Prior felony conviction of making or causing to be made any knowingly false or fraudulent statement of any fact material to the determination of the premium, rate, or cost of any policy of workers' compensation insurance for the purpose of reducing the premium, rate, or cost of the insurance with a current conviction of the same offense (subd. (b), Sec. 11760, Ins. C.).

(20) Prior felony conviction of making or causing to be made any knowingly false or fraudulent statement of any fact material to the determination of the premium, rate, or cost of any policy of workers'

compensation insurance issued or administered by the State Compensation Insurance Fund for the purpose of reducing the premium, rate, or cost of the insurance with a current conviction of the same offense (subd. (b), Sec. 11880, Ins. C.).

(21) Fraudulently appropriating food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program entrusted to a public employee, or knowingly using, transferring, selling, purchasing, or possessing, any of the same in an unauthorized manner, when the offense is committed by means of an electronic transfer of benefits in an amount exceeding one hundred fifty thousand dollars ($150,000), but less than one million dollars ($1,000,000) (subpara. (B), para. (1), subd. (h), Sec. 10980, W.& I.C.).

(f) The provisions listed in this subdivision imposing a sentence enhancement of two, three, or four years' imprisonment in the state prison may be referenced as Schedule F.

(1) Commission of a felony, other than a serious or violent felony, for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members (subpara. (A), para. (1), subd. (b), Sec. 186.22, Pen. C.).

(2) Acting in concert with another person or aiding or abetting another person in committing or attempting to commit a felony hate crime (subd. (c), Sec. 422.75, Pen. C.).

(3) Carrying a loaded or unloaded firearm together with a detachable shotgun magazine, a detachable pistol magazine, a detachable magazine, or a belt-feeding device during the commission or attempted commission of any felony street gang crime (subd. (b), Sec. 12021.5, Pen. C.).

(g) The provisions listed in this subdivision imposing a sentence enhancement of two, three, or five years' imprisonment in the state prison may be referenced as Schedule G.

(1) Commission of two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, involving the taking of more than five hundred thousand dollars ($500,000) (para. (2), subd. (a), Sec. 186.11, Pen. C.).

(h) The provisions listed in this subdivision imposing a sentence enhancement of three years' imprisonment in the state prison may be referenced as Schedule H.

(1) Money laundering when the value of transactions exceeds one million dollars ($1,000,000), but is less than two million five hundred thousand dollars ($2,500,000) (subpara. (C), para. (1), subd. (c), Sec. 186.10, Pen. C.).

(2) Solicitation, recruitment, or coercion, of a minor to actively participate in a criminal street gang (subd. (d), Sec. 186.26, Pen. C.).

(3) Willfully mingling any poison or harmful substance which may cause death if ingested, or which causes the infliction of great bodily injury on any person, with any food, drink, medicine, or pharmaceutical product or willfully placing that poison or harmful substance in any spring, well, reservoir, or public water supply (para. (2), subd. (a), Sec. 347, Pen. C.).

(4) Causing great bodily injury by willfully causing or permitting any elder or dependent adult to suffer, or inflicting pain or mental suffering upon, or endangering the health of, an elder or dependent adult when the victim is under 70 years of age (subpara. (A), para. (2), subd. (b), Sec. 368, Pen. C.).

(5) Maliciously driving or placing, in any tree, saw-log, shingle-bolt, or other wood, any iron, steel, ceramic, or other substance sufficiently hard to injure saws and causing bodily injury to another person other than an accomplice (subd. (b), Sec. 593a, Pen. C.).

(6) Prior prison term for violent felony with current violent felony conviction (subd. (a), Sec. 667.5, Pen. C.).

(7) Commission of any specified felony sex offense by a primary care provider in a day care facility against a minor entrusted to his or her care while voluntarily acting in concert with another (subd. (b), Sec. 674, Pen. C.).

(8) Commission or attempted commission of a felony while armed with an assault weapon or a machinegun (para. (2), subd. (a), Sec. 12022, Pen. C.).

(9) Taking, damaging, or destroying any property in the commission or attempted commission of a felony with the intent to cause that taking, damage, or destruction when the loss exceeds one million dollars ($1,000,000) (para. (3), subd. (a), Sec. 12022.6, Pen. C.).

(10) Personally inflicting great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony (subd. (a), Sec. 12022.7, Pen. C.).

(11) Administering by injection, inhalation, ingestion, or any other means, any specified controlled substance against the victim's will by means of force, violence, or fear of immediate and unlawful bodily injury to the victim or another person for the purpose of committing a felony (Sec. 12022.75, Pen. C.).

(12) Commission of any specified sex offense with knowledge that the defendant has acquired immune deficiency syndrome (AIDS) or with the knowledge that he or she carries antibodies of the human immunodeficiency virus at the time of the commission of the offense (subd. (a), Sec. 12022.85, Pen. C.).

(13) Inducing another person to commit a drug offense as part of the drug transaction for which the defendant is convicted when the value of

the controlled substance involved exceeds five million dollars ($5,000,000) (para. (3), subd. (a), Sec. 11356.5, H.& S.C.).

(14) Prior conviction of any specified drug offense with current conviction of any specified drug offense (subds. (a), (b), and (c), Sec. 11370.2, H.& S.C.).

(15) Commission of any specified drug offense involving a substance containing heroin, cocaine base, cocaine, methamphetamine, amphetamine, or phencyclidine (PCP), when the substance exceeds one kilogram or 30 liters (para. (1), subd. (a), and para. (1), subd. (b), Sec. 11370.4, H.& S.C.).

(16) Manufacturing, compounding, converting, producing, deriving, processing, or preparing any substance containing amphetamine, methamphetamine, or phencyclidine (PCP) or its analogs or precursors, or attempting to commit any of those acts, when the substance exceeds three gallons or one pound (para. (1), subd. (a), Sec. 11379.8, H.& S.C.).

(17) Four or more prior convictions of specified alcohol-related vehicle offenses with current conviction of driving under the influence and causing great bodily injury (subd. (c), Sec. 23566, Veh. C.).

(18) Fraudulently appropriating food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program entrusted to a public employee, or knowingly using, transferring, selling, purchasing, or possessing, any of the same in an unauthorized manner, when the offense is committed by means of an electronic transfer of benefits in an amount exceeding one million dollars ($1,000,000), but less than two million five hundred thousand dollars ($2,500,000) (subpara. (C), para. (1), subd. (h), Sec. 10980, W.& I.C.).

(i) The provisions listed in this subdivision imposing a sentence enhancement of three, four, or five years' imprisonment in the state prison may be referenced as Schedule I.

(1) Commission of felony arson with prior conviction of arson or unlawfully starting a fire, or causing great bodily injury to a firefighter, peace officer, other emergency personnel, or multiple victims, or causing the burning of multiple structures, or using an accelerator or ignition delay device (subd. (a), Sec. 451.1, Pen. C.).

(2) Commission or attempted commission of any specified drug offense while personally armed with a firearm (subd. (c), Sec. 12022, Pen. C.).

(3) Personally inflicting great bodily injury under circumstances involving domestic violence in the commission or attempted commission of a felony (subd. (e), Sec. 12022.7, Pen. C.).

(4) Commission of any specified drug offense involving cocaine base, heroin, or methamphetamine, or a conspiracy to commit any of those offenses, upon the grounds of, or within 1,000 feet of, a school

during school hours or when minors are using the facility (subd. (b), Sec. 11353.6, H.& S.C.).

(5) Commission of any specified drug offense involving cocaine base, heroin, or methamphetamine, or a conspiracy to violate any of those offenses, involving a minor who is at least four years younger than the defendant (subd. (c), Sec. 11353.6, H.& S.C.).

(j) The provisions listed in this subdivision imposing a sentence enhancement of 3, 4, or 10 years' imprisonment in the state prison may be referenced as Schedule J.

(1) Commission or attempted commission of any felony while armed with a firearm and in the immediate possession of ammunition for the firearm designed primarily to penetrate metal or armor (subd. (a), Sec. 12022.2, Pen. C.).

(2) Commission or attempted commission of any specified sex offense while using a firearm or deadly weapon (subd. (a), Sec. 12022.3, Pen. C.).

(3) Commission or attempted commission of a felony while personally using a firearm (para. (1), subd. (a), Sec. 12022.5, Pen. C.).

(4) Commission or attempted commission of any specified drug offense while personally using a firearm (subd. (c), Sec. 12022.5, Pen. C.).

(k) The provisions listed in this subdivision imposing a sentence enhancement of four years' imprisonment in the state prison may be referenced as Schedule K.

(1) Money laundering when the value of transactions exceeds two million five hundred thousand dollars ($2,500,000) (subpara. (D), para. (1), subd. (c), Sec. 186.10, Pen. C.).

(2) Prior conviction of willfully inflicting upon a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition with current conviction of that offense (subd. (b), Sec. 273d, Pen. C.).

(3) Taking, damaging, or destroying any property in the commission or attempted commission of a felony with the intent to cause that taking, damage, or destruction when the loss exceeds two million five hundred thousand dollars ($2,500,000) (para. (4), subd. (a), Sec. 12022.6, Pen. C.).

(4) Personally, willfully, and maliciously discharging a firearm from a motor vehicle at another person other than an occupant of a motor vehicle and causing a victim to suffer paralysis or paraparesis of a major body part (para. (1), subd. (b), Sec. 12022.9, Pen. C.).

(5) Personally, willfully, and maliciously discharging a firearm from a motor vehicle at another occupied motor vehicle and causing a victim to suffer paralysis or paraparesis of a major body part (para. (2), subd. (b), Sec. 12022.9, Pen. C.).

(6) Willfully causing or permitting any child to suffer, or inflicting on the child unjustifiable physical pain or injury that results in death under circumstances or conditions likely to produce great bodily harm or death, or, having the care or custody of any child, willfully causing or permitting that child to be injured or harmed under circumstances likely to produce great bodily harm or death, when that injury or harm results in death (Sec. 12022.95, Pen. C.).

(7) Fraudulently appropriating food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program entrusted to a public employee, or knowingly using, transferring, selling, purchasing, or possessing, any of the same in an unauthorized manner, when the offense is committed by means of an electronic transfer of benefits in an amount exceeding two million five hundred thousand dollars ($2,500,000) (subpara. (D), para. (1), subd. (h), Sec. 10980, W.& I.C.).

(8) Execution of a scheme or artifice to defraud the Medi-Cal program or any other health care program administered by the State Department of Health Services or its agents or contractors, or to obtain under false or fraudulent pretenses, representations, or promises any property owned by or under the custody of the Medi-Cal program or any health care program administered by the department, its agents, or contractors under circumstances likely to cause or that do cause two or more persons great bodily injury (subd. (d), Sec. 14107, W.& I.C.).

(*l*) The provisions listed in this subdivision imposing a sentence enhancement of four, five, or six years' imprisonment in the state prison may be referenced as Schedule L.

(1) Personally inflicting great bodily injury on a child under the age of five years in the commission or attempted commission of a felony (subd. (d), Sec. 12022.7, Pen. C.).

(m) The provisions listed in this subdivision imposing a sentence enhancement of 4, 5, or 10 years' imprisonment in the state prison may be referenced as Schedule M.

(1) Commission or attempted commission of a felony while personally using a firearm with prior conviction of carjacking or attempted carjacking (para. (2), subd. (a), Sec. 12022.5, Pen. C.).

(n) The provisions listed in this subdivision imposing a sentence enhancement of five years' imprisonment in the state prison may be referenced as Schedule N.

(1) Commission of a serious felony for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members (subpara. (B), para. (1), subd. (b), Sec. 186.22, Pen. C.).

(2) Using sex offender registration information to commit a felony (para. (1), subd. (q), Sec. 290, and para. (1), subd. (b), Sec. 290.4, Pen. C.).

(3) Causing great bodily injury by willfully causing or permitting any elder or dependent adult to suffer, or inflicting pain or mental suffering upon, or endangering the health of, an elder or dependent adult when the victim is 70 years of age or older (subpara. (B), para. (2), subd. (b), Sec. 368, Pen. C.).

(4) Causing death by willfully causing or permitting any elder or dependent adult to suffer, or inflicting pain or mental suffering upon, or endangering the health of, an elder or dependent adult when the victim is under 70 years of age (subpara. (A), para. (3), subd. (b), Sec. 368, Pen. C.).

(5) Two prior felony convictions of knowingly causing or participating in a vehicular collision or accident for the purpose of presenting any false or fraudulent claim with current conviction of the same (subd. (f), Sec. 550, Pen. C.).

(6) Prior conviction of a serious felony with current conviction of a serious felony (para. (1), subd. (a), Sec. 667, Pen. C.).

(7) Prior conviction of any specified sex offense with current conviction of lewd and lascivious acts with a child under 14 years of age (subd. (a), Sec. 667.51, Pen. C.).

(8) Prior conviction of any specified sex offense with current conviction of any of those sex offenses (subd. (a), Sec. 667.6, Pen. C.).

(9) Kidnapping or carrying away any child under 14 years of age with the intent to permanently deprive the parent or legal guardian custody of that child (Sec. 667.85, Pen. C.).

(10) Personally inflicting great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony that causes the victim to become comatose due to a brain injury or to suffer paralysis of a permanent nature (subd. (b), Sec. 12022.7, Pen. C.).

(11) Personally inflicting great bodily injury on another person who is 70 years of age or older other than an accomplice in the commission or attempted commission of a felony (subd. (c), Sec. 12022.7, Pen. C.).

(12) Inflicting great bodily injury on any victim in the commission or attempted commission of any specified sex offense (Sec. 12022.8, Pen. C.).

(13) Personally and intentionally inflicting injury upon a pregnant woman during the commission or attempted commission of a felony that results in the termination of the pregnancy when the defendant knew or reasonably should have known that the victim was pregnant (subd. (a), Sec. 12022.9, Pen. C.).

(14) Using information disclosed to the licensee of a community care facility by a prospective client regarding his or her status as a sex offender to commit a felony (subd. (c), Sec. 1522.01, H.& S.C.).

(15) Commission of any specified drug offense involving a substance containing heroin, cocaine base, cocaine, methamphetamine, amphetamine, or phencyclidine (PCP), when the substance exceeds 4 kilograms or 100 liters (para. (2), subd. (a), and para. (2), subd. (b), Sec. 11370.4, H.& S.C.).

(16) Manufacturing, compounding, converting, producing, deriving, processing, or preparing methamphetamine or phencyclidine (PCP), or attempting to commit any of those acts, or possessing specified combinations of substances with the intent to manufacture either methamphetamine or phencyclidine (PCP), when the commission of the crime causes any child under 16 years of age to suffer great bodily injury (subd. (b), Sec. 11379.7, H.& S.C.).

(17) Manufacturing, compounding, converting, producing, deriving, processing, or preparing any substance containing amphetamine, methamphetamine, or phencyclidine (PCP) or its analogs or precursors, or attempting to commit any of those acts, when the substance exceeds 10 gallons or three pounds (para. (2), subd. (a), Sec. 11379.8, H.& S.C.).

(18) Fleeing the scene of the crime after commission of vehicular manslaughter (subd. (c), Sec. 20001, Veh. C.).

(o) The provisions listed in this subdivision imposing a sentence enhancement of 5, 6, or 10 years' imprisonment in the state prison may be referenced as Schedule O.

(1) Discharging a firearm at an occupied motor vehicle in the commission or attempted commission of a felony which caused great bodily injury or death to another person (para. (1), subd. (b), Sec. 12022.5, Pen. C.).

(2) Commission or attempted commission of a felony while personally using an assault weapon or a machinegun (para. (2), subd. (b), Sec. 12022.5, Pen. C.).

(3) Discharging a firearm from a motor vehicle in the commission or attempted commission of a felony with the intent to inflict great bodily injury or death and causing great bodily injury or death (Sec. 12022.55, Pen. C.).

(p) The provisions listed in this subdivision imposing a sentence enhancement of seven years' imprisonment in the state prison may be referenced as Schedule P.

(1) Causing death by willfully causing or permitting any elder or dependent adult to suffer, or inflicting pain or mental suffering upon, or endangering the health of, an elder or dependent adult when the victim is 70 years of age or older (subpara. (B), para. (3), subd. (b), Sec. 368, Pen. C.).

(q) The provisions listed in this subdivision imposing a sentence enhancement of nine years' imprisonment in the state prison may be referenced as Schedule Q.

(1) Kidnapping a victim for the purpose of committing any specified felony sex offense (subd. (a), Sec. 667.8, Pen. C.).

(r) The provisions listed in this subdivision imposing a sentence enhancement of 10 years' imprisonment in the state prison may be referenced as Schedule R.

(1) Commission of a violent felony for the benefit of, at the direction of, or in association with, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members (subpara. (C), para. (1), subd. (b), Sec. 186.22, Pen. C.).

(2) Two or more prior prison terms for any specified sex offense with current conviction of any of those sex offenses (subd. (b), Sec. 667.6, Pen. C.).

(3) Commission or attempted commission of any specified felony offense while personally using a firearm (subd. (b), Sec. 12022.53, Pen. C.).

(4) Commission of any specified drug offense involving a substance containing heroin, cocaine base, cocaine, methamphetamine, amphetamine, or phencyclidine (PCP), when the substance exceeds 10 kilograms or 200 liters (para. (3), subd. (a), and para. (3), subd. (b), Sec. 11370.4, H.& S.C.).

(5) Manufacturing, compounding, converting, producing, deriving, processing, or preparing any substance containing amphetamine, methamphetamine, or phencyclidine (PCP) or its analogs or precursors, or attempting to commit any of those acts, when the substance exceeds 25 gallons or 10 pounds (para. (3), subd. (a), Sec. 11379.8, H.& S.C.).

(s) The provisions listed in this subdivision imposing a sentence enhancement of 15 years' imprisonment in the state prison may be referenced as Schedule S.

(1) Kidnapping a victim under 14 years of age for the purpose of committing any specified felony sex offense (subd. (b), Sec. 667.8, Pen. C.).

(2) Commission of any specified drug offense involving a substance containing heroin, cocaine base, cocaine, methamphetamine, amphetamine, or phencyclidine (PCP), when the substance exceeds 20 kilograms or 400 liters (para. (4), subd. (a), and para. (4), subd. (b), Sec. 11370.4, H.& S.C.).

(3) Manufacturing, compounding, converting, producing, deriving, processing, or preparing any substance containing amphetamine, methamphetamine, or phencyclidine (PCP) or its analogs or precursors, or attempting to commit any of those acts, when the substance exceeds 105 gallons or 44 pounds (para. (4), subd. (a), Sec. 11379.8, H.& S.C.).

(t) The provisions listed in this subdivision imposing a sentence enhancement of 20 years' imprisonment in the state prison may be referenced as Schedule T.

(1) Intentionally and personally discharging a firearm in the commission or attempted commission of any specified felony offense (subd. (c), Sec. 12022.53, Pen. C.).

(2) Commission of any specified drug offense involving a substance containing heroin, cocaine base, or cocaine, when the substance exceeds 40 kilograms (para. (5), subd. (a), Sec. 11370.4, H.& S.C.).

(u) The provisions listed in this subdivision imposing a sentence enhancement of 25 years' imprisonment in the state prison may be referenced as Schedule U.

(1) Commission of any specified drug offense involving a substance containing heroin, cocaine base, or cocaine, when the substance exceeds 80 kilograms (para. (6), subd. (a), Sec. 11370.4, H.& S.C.).

(v) The provisions listed in this subdivision imposing a sentence enhancement of 25 years to life imprisonment in the state prison may be referenced as Schedule V.

(1) Intentionally and personally discharging a firearm in the commission or attempted commission of any specified felony offense and proximately causing great bodily injury to any person other than an accomplice (subd. (d), Sec. 12022.53, Pen. C.).

SEC. 37. Section 667.7 of the Penal Code is amended to read:

667.7. (a) Any person convicted of a felony in which the person inflicted great bodily injury as provided in Section 12022.53 or 12022.7, or personally used force which was likely to produce great bodily injury, who has served two or more prior separate prison terms as defined in Section 667.5 for the crime of murder; attempted murder; voluntary manslaughter; mayhem; rape by force, violence, or fear of immediate and unlawful bodily injury on the victim or another person; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; lewd acts on a child under the age of 14 years by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; a violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; kidnapping as punished in former subdivision (d) of Section 208, or for ransom, extortion, or robbery; robbery involving the use of force or a deadly weapon; assault with intent to commit murder; assault with a deadly weapon; carjacking involving the use of a deadly weapon; assault with intent to commit murder; assault

with a deadly weapon; assault with a force likely to produce great bodily injury; assault with intent to commit rape, sodomy, oral copulation, sexual penetration in violation of Section 289, or lewd and lascivious acts on a child; arson of a structure; escape or attempted escape by an inmate with force or violence in violation of subdivision (a) of Section 4530, or of Section 4532; exploding a destructive device with intent to murder in violation of Section 12308; exploding a destructive device which causes bodily injury in violation of Section 12309, or mayhem or great bodily injury in violation of Section 12310; exploding a destructive device with intent to injure, intimidate, or terrify, in violation of Section 12303.3; any felony in which the person inflicted great bodily injury as provided in Section 12022.53 or 12022.7; or any felony punishable by death or life imprisonment with or without the possibility of parole is a habitual offender and shall be punished as follows:

(1) A person who served two prior separate prison terms shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 20 years, or the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046, whichever is greatest. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time.

(2) Any person convicted of a felony specified in this subdivision who has served three or more prior separate prison terms, as defined in Section 667.5, for the crimes specified in subdivision (a) of this section shall be punished by imprisonment in the state prison for life without the possibility of parole.

(b) This section shall not prevent the imposition of the punishment of death or imprisonment for life without the possibility of parole. No prior prison term shall be used for this determination which was served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. As used in this section, a commitment to the Department of the Youth Authority after conviction for a felony shall constitute a prior prison term. The term imposed under this section shall be imposed only if the prior prison terms are alleged under this section in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

SEC. 38. Section 670 of the Penal Code is amended to read:

670. (a) Any person who violates Section 7158 or 7159 of, or subdivision (b), (c), (d), or (e) of Section 7161 of, the Business and Professions Code or Section 470, 484, 487, or 532 of this code as part of a plan or scheme to defraud an owner or lessee of a residential or nonresidential structure in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster specified in subdivision (b), shall be subject to the penalties and enhancements specified in subdivisions (c) and (d). The existence of any fact which would bring a person under this section shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(b) This section applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

(c) The maximum or prescribed amounts of fines for offenses subject to this section shall be doubled. If the person has been previously convicted of a felony offense specified in subdivision (a), the person shall receive a one-year enhancement in addition to, and to run consecutively to, the term of imprisonment for any felony otherwise prescribed by this subdivision.

(d) Additionally, the court shall order any person sentenced pursuant to this section to make full restitution to the victim or to make restitution to the victim based on the person's ability to pay, as defined in subdivision (b) of Section 1203.1b. The payment of the restitution ordered by the court pursuant to this subdivision shall be made a condition of any probation granted by the court for an offense punishable under this section. Notwithstanding any other provision of law, the period of probation shall be at least five years or until full restitution is made to the victim, whichever first occurs.

(e) Notwithstanding any other provision of law, the prosecuting agency shall be entitled to recover its costs of investigation and prosecution from any fines imposed for a conviction under this section.

SEC. 39. Section 778a of the Penal Code is amended to read:

778a. (a) Whenever a person, with intent to commit a crime, does any act within this state in execution or part execution of that intent, which culminates in the commission of a crime, either within or without this state, the person is punishable for that crime in this state in the same manner as if the crime had been committed entirely within this state.

(b) Whenever a person who, within this state, kidnaps another person within the meaning of Sections 207 and 209, and thereafter carries the person into another state or country and commits any crime of violence

or theft against that person in the other state or country, the person is punishable for that crime of violence or theft in this state in the same manner as if the crime had been committed within this state.

SEC. 40. Section 933.06 of the Penal Code is amended to read:

933.06. (a) Notwithstanding Sections 916 and 940, in a county having a population of 20,000 or less, a final report may be adopted and submitted pursuant to Section 933 with the concurrence of at least 10 grand jurors if all of the following conditions are met:

(1) The grand jury consisting of 19 persons has been impaneled pursuant to law, and the membership is reduced from 19 to fewer than 12.

(2) The vacancies have not been filled pursuant to Section 908.1 within 30 days from the time that the clerk of the superior court is given written notice that the vacancy has occurred.

(3) A final report has not been submitted by the grand jury pursuant to Section 933.

(b) Notwithstanding Section 933, no responsible officers, agencies, or departments shall be required to comment on a final report submitted pursuant to this section.

SEC. 41. Section 1170.11 of the Penal Code is amended to read:

1170.11. As used in Section 1170.1, the term ''specific enhancement'' means enhancements that relate to the circumstances of the crime. It includes, but is not limited to, the enhancements provided in Sections 186.10, 186.11, 186.22, 186.26, 186.33, 273.4, 289.5, 290, 290.4, 347, and 368, subdivisions (a), (b), and (c) of Section 422.75, paragraphs (2), (3), (4), and (5) of subdivision (a) of Section 451.1, paragraphs (2), (3), and (4) of subdivision (a) of Section 452.1, subdivision (g) of Section 550, Sections 593a, 600, 667.8, 667.85, 667.9, 667.10, 667.15, 667.16, 667.17, 674, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, 12022.85, 12022.9, 12022.95, 12072, and 12280 of this code, and in Sections 1522.01 and 11353.1, subdivision (b) of Section 11353.4, Sections 11353.6, 11356.5, 11370.4, 11379.7, 11379.8, 11379.9, 11380.1, 11380.5, 25189.5, and 25189.7 of the Health and Safety Code, and in Sections 20001 and 23558 of the Vehicle Code, and in Sections 10980 and 14107 of the Welfare and Institutions Code.

SEC. 42. Section 1174.4 of the Penal Code is amended to read:

1174.4. (a) Persons eligible for participation in this alternative sentencing program shall meet all of the following criteria:

(1) Pregnant women with an established history of substance abuse, or pregnant or parenting women with an established history of substance abuse who have one or more children under six years old at the time of entry into the program. For women with children, at least one eligible child shall reside with the mother in the facility.

(2) Never served a prior prison term for, nor been convicted in the present proceeding of, committing or attempting to commit, any of the following offenses:

(A) Murder or voluntary manslaughter.

(B) Mayhem.

(C) Rape.

(D) Kidnapping.

(E) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(F) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(G) Lewd acts on a child under 14 years of age, as defined in Section 288.

(H) Any felony punishable by death or imprisonment in the state prison for life.

(I) Any felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, or any felony in which the defendant uses a firearm, as provided in Section 12022.5, 12022.53, or 12022.55, in which the use has been charged and proved.

(J) Robbery.

(K) Any robbery perpetrated in an inhabited dwelling house or trailer coach as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(L) Arson in violation of subdivision (a) of Section 451.

(M) Sexual penetration in violation of subdivision (a) of Section 289 if the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(N) Rape or sexual penetration in concert, in violation of Section 264.1.

(O) Continual sexual abuse of a child in violation of Section 288.5.

(P) Assault with intent to commit mayhem, rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child, or sexual penetration.

(Q) Assault with a deadly weapon or with force likely to produce great bodily injury in violation of subdivision (a) of Section 245.

(R) Any violent felony defined in Section 667.5.

(S) A violation of Section 12022.

(T) A violation of Section 12308.

(U) Burglary of the first degree.

(V) A violation of Section 11351, 11351.5, 11352, 11353, 11358, 11359, 11360, 11370.1, 11370.6, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, or 11383 of the Health and Safety Code.

(3) Has not been sentenced to state prison for a term exceeding 36 months.

(b) Prior to sentencing, if the court proposes to give consideration to a placement, the court shall consider a written evaluation by the probation department, which shall include the following:

(1) Whether the defendant is eligible for participation pursuant to this section.

(2) Whether participation by the defendant and her eligible children is deemed to be in the best interests of the children.

(3) Whether the defendant is amenable to treatment for substance abuse and would benefit from participation in the program.

(4) Whether the program is deemed to be in the best interests of an eligible child of the defendant, as determined by a representative of the appropriate child welfare services agency of the county if the child is a dependent child of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

(c) The district attorney shall make a recommendation to the court as to whether or not the defendant would benefit from the program, which the court shall consider in making its decision. If the court's decision is without the concurrence of the district attorney, the court shall specify its reasons in writing and enter them into the record.

(d) If the court determines that the defendant may benefit from participation in this program, the court may impose a state prison sentence with the recommendation that the defendant participate in the program pursuant to this chapter. The court shall notify the department within 48 hours of imposition of this sentence.

(e) The Director of Corrections shall consider the court's recommendation in making a determination on the inmate's placement in the program.

(f) Women accepted for the program by the Director of Corrections shall be delivered by the county, pursuant to Section 1202a, to the facility selected by the department. Before the director accepts a woman for the program, the county shall provide to the director the necessary information to determine her eligibility and appropriate placement status. Priority for services and aftercare shall be given to inmates who are incarcerated in a county, or adjacent to a county, in which a program facility is located.

(g) Prior to being admitted to the program, each participant shall voluntarily sign an agreement specifying the terms and conditions of participation in the program.

(h) The department may refer inmates back to the sentencing court if the department determines that an eligible inmate has not been recommended for the program. The department shall refer the inmate to the court by an evaluative report so stating the department's assessment of eligibility, and requesting a recommendation by the court.

(i) Women who successfully complete the program, including the minimum of one year of transition services under intensive parole supervision, shall be discharged from parole. Women who do not successfully complete the program shall be returned to the state prison where they shall serve their original sentences. These persons shall receive full credit against their original sentences for the time served in the program, pursuant to Section 2933.

SEC. 43. Section 1203.044 of the Penal Code is amended to read:

1203.044. (a) This section shall apply only to a defendant convicted of a felony for theft of an amount exceeding fifty thousand dollars ($50,000) in a single transaction or occurrence. This section shall not apply unless the fact that the crime involved the theft of an amount exceeding fifty thousand dollars ($50,000) in a single transaction or occurrence is charged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact. Aggregate losses from more than one criminal act shall not be considered in determining if this section applies.

(b) Notwithstanding any other law, probation shall not be granted to a defendant convicted of a crime to which subdivision (a) applies if the defendant was previously convicted of an offense for which an enhancement pursuant to Section 12022.6 was found true even if that enhancement was not imposed by the sentencing court. The prior conviction shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(c) In deciding whether to grant probation to a defendant convicted of a crime to which subdivision (a) applies, the court shall consider all relevant information, including the extent to which the defendant has attempted to pay restitution to the victim between the date upon which the defendant was convicted and the date of sentencing. A defendant claiming inability to pay restitution before the date of sentencing shall provide a statement of assets, income, and liabilities, as set forth in subdivision (j) to the court, the probation department, and the prosecution.

(d) In addition to the restrictions on probation imposed by subdivisions (b) and (c), probation shall not be granted to any person convicted of theft in an amount exceeding one hundred thousand dollars ($100,000) in a single transaction or occurrence, except in unusual cases if the interests of justice would best be served if the person is granted

probation. The fact that the theft was of an amount exceeding one hundred thousand dollars ($100,000) in a single transaction or occurrence, shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact. This subdivision shall not authorize a grant of probation otherwise prohibited under subdivision (b) or (c). If probation is granted pursuant to this subdivision, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition. Aggregate losses from more than one criminal act shall not be considered in determining whether this subdivision applies.

(e) Subject to subdivision (f), if a defendant is convicted of a crime to which subdivision (a) applies and the court grants probation, a court shall impose at least a 90-day sentence in a county jail as a condition of probation. If the defendant was convicted of a crime to which subdivision (d) applies, and the court grants probation, the court shall impose at least a 180-day sentence in a county jail as a condition of probation.

(f) The court shall designate a portion of any sentence imposed pursuant to subdivision (e) as a mandatory in-custody term. For the purpose of this section only, ''mandatory in-custody term'' means that the defendant shall serve that term, notwithstanding credits pursuant to Section 4019, in custody in a county jail. The defendant shall not be allowed release on any program during that term, including work furlough, work release, public service program, or electronic monitoring. The court shall designate the mandatory in-custody term as follows:

(1) If the defendant was convicted of a crime to which subdivision (a) applies, the mandatory in-custody term shall be no less than 30 days. If the person serves a mandatory in-custody term of at least 30 days, the court may, in the interests of justice, and for reasons stated in the record, reduce the mandatory minimum 90-day sentence required by subdivision (e).

(2) If the defendant was convicted of a crime to which subdivision (d) applies, the mandatory in-custody term shall be no less than 60 days. If the person serves a mandatory in-custody term of at least 60 days, the court may, in the interests of justice, and for reasons stated in the record, reduce the mandatory minimum 180-day sentence required by subdivision (e).

(g) If a defendant is convicted of a crime to which subdivision (a) applies, and the court grants probation, the court shall require the defendant as a condition of probation to pay restitution to the victim and to pay a surcharge to the county in the amount of 20 percent of the restitution ordered by the court, as follows:

(1) The surcharge is not subject to any assessments otherwise imposed by Section 1464. The surcharge shall be paid into the county treasury and placed in the general fund to be used exclusively for the investigation and prosecution of white collar crime offenses and to pay the expenses incurred by the county in administering this section, including increased costs incurred as a result of offenders serving mandatory in-custody terms pursuant to this section.

(2) The court shall also enter an income deduction order as provided in Section 13967.2 of the Government Code to secure payment of the surcharge. That order may be enforced to secure payment of the surcharge as provided by those provisions.

(3) The county board of supervisors shall not charge the fee provided for by Section 1203.1, subdivision (*l*) of Section 1202.4, or subdivision (d) of Section 13967, as operative on or before September 28, 1994, of the Government Code for the collection of restitution or any restitution fine.

(4) The defendant shall not be required to pay the costs of probation as otherwise required by subdivision (b) of Section 1203.1.

(h) Notwithstanding any other law, if a defendant is convicted of a crime to which subdivision (a) applies and the court grants probation, as a condition of probation, within 30 court days after being granted probation, and annually thereafter, the defendant shall provide the county financial officer with all of the following documents and records:

(1) True and correct copies of all income tax and personal property tax returns for the previous tax year, including W-2 forms filed on the defendant's behalf with any state tax agency. If the defendant is unable to supply a copy of a state tax return, the defendant shall provide a true and correct copy of all income tax returns for the previous tax year filed on his or her behalf with the federal government. The defendant is not required to provide any particular document if to do so would violate federal law or the law of the state in which the document was filed. However, this section shall supersede all other laws in this state concerning the right to privacy with respect to tax returns filed with this state. If, during the term of probation, the defendant intentionally fails to provide the county financial officer with any document that he or she knows is required to be provided under this subdivision, that failure shall constitute a violation of probation.

(2) A statement of income, assets, and liabilities as defined in subdivision (j).

(i) The submission by the defendant of any tax document pursuant to paragraph (1) of subdivision (h) that the defendant knows does not accurately state the defendant's income, or if required, the defendant's personal property, if the inaccuracy is material, constitutes a violation of probation.

(j) A statement of income, assets, and liabilities form, that is consistent with the disclosure requirements of this section, may be established by the financial officer of each county. That statement shall require the defendant to furnish relevant financial information identifying the defendant's income, assets, possessions, or liabilities, actual or contingent. The statement may include the following:

(1) All real property in which the defendant has any interest.

(2) Any item of personal property worth more than three thousand dollars ($3,000) in which the defendant has any interest, including, but not limited to, vehicles, airplanes, boats, computers, and consumer electronics. Any collection of jewelry, coins, silver, china, artwork, antiques, or other collectibles in which the defendant has any interest, if that collection is worth more than three thousand dollars ($3,000).

(3) All domestic and foreign assets in the defendant's name, or in the name of the defendant's spouse or minor children, of a value over three thousand dollars ($3,000) and in whatever form, including, but not limited to, bank accounts, securities, stock options, bonds, mutual funds, money market funds, certificates of deposits, annuities, commodities, precious metals, deferred compensation accounts, individual retirement accounts, and related or analogous accounts.

(4) All insurance policies in which the defendant or the defendant's spouse or minor children retain a cash value.

(5) All pension funds in which the defendant has a vested right.

(6) All insurance policies of which the defendant is a beneficiary.

(7) All contracts, agreements, judgments, awards, or prizes granting the defendant the right to receive money or real or personal property in the future, including alimony and child support.

(8) All trusts of which the defendant is a beneficiary.

(9) All unrevoked wills of a decedent if the defendant or defendant's spouse or minor child is a beneficiary.

(10) All lawsuits currently maintained by the defendant or by or against a corporation in which the defendant owns more than a 25-percent interest if the suit includes a prayer for damages.

(11) All corporations of which the defendant is an officer. If the defendant is an officer in a corporation sole, subchapter S corporation, or closely held corporation, and controls more equity of that corporation than any other individual, the county financial officer shall have authority to request other records of the corporation.

(12) All debts in excess of three thousand dollars ($3,000) owed by the defendant to any person or entity.

(13) Copies of all applications for loans made by the defendant during the last year.

(14) All encumbrances on any real and personal property in which the defendant has any interest.

(15) All sales, transfers, assignments, quitclaims, conveyances, or encumbrances of any interest in real or personal property of a value exceeding three thousand dollars ($3,000) made by the defendant during the period beginning one year before charges were filed to the present, including the identity of the recipient of same, and relationship, if any, to the defendant.

(k) The information contained in the statement of income, assets, and liabilities shall not be available to the public. Information received pursuant to this subdivision shall not be disclosed to any member of the public. Any disclosure in violation of this section shall be a contempt of court punishable by a fine not exceeding one thousand dollars ($1,000), and shall also create a civil cause of action for damages.

(*l*) After providing the statement of income, assets, and liabilities, the defendant shall provide the county financial officer with copies of any documents representing or reflecting the financial information set forth in subdivision (j) as requested by that officer.

(m) The defendant shall sign the statement of income, assets, and liabilities under penalty of perjury. The provision of information known to be false, or the intentional failure to provide material information knowing that it was required to have been provided, shall constitute a violation of probation.

(n) The Franchise Tax Board and the Employment Development Department shall release copies of income tax returns filed by the defendant and other information concerning the defendant's current income and place of employment to the county financial officer upon request. That information shall be kept confidential and shall not be made available to any member of the public. Any unauthorized release shall be subject to subdivision (k). The county shall reimburse the reasonable administrative expenses incurred by those agencies in providing this information.

(o) During the term of probation, the defendant shall notify the county financial officer in writing within 30 days, after receipt from any source of any money or real or personal property that has a value of over five thousand dollars ($5,000), apart from the salary from the defendant's and the defendant's spouse's regular employment. The defendant shall report the source and value of the money or real or personal property received. This information shall not be made available to the public or the victim. Any unauthorized release shall be subject to subdivision (k).

(p) The term of probation in all cases shall be 10 years. However, after the defendant has served five years of probation, the defendant shall be released from all terms and conditions of probation except those terms and conditions included within this section. A court may not revoke or otherwise terminate probation within 10 years unless and until the defendant has satisfied both the restitution judgment and the surcharge,

or the defendant is imprisoned for a violation of probation. Upon satisfying the restitution judgment, the defendant is entitled to a court order vacating that judgment and removing it from the public record. Amounts owing on the surcharge are forgiven upon completion of the term of probation.

(q) The county financial officer shall establish a suggested payment schedule each year to ensure that the defendant remits amounts to make restitution to the victim and pay the surcharge. The county financial officer shall evaluate the defendant's current earnings, future earning capacity, assets (including assets that are in trust or in accounts where penalties may be incurred upon premature withdrawal of funds), and liabilities, and set payments to the county based upon the defendant's ability to pay. The defendant shall bear the burden of demonstrating the lack of his or her ability to pay. If the defendant objects to the suggested payment schedule, the court shall set the schedule. Express findings by the court as to the factors bearing on the payment schedule shall not be required. After the payment schedule is set, a defendant may request a change in the schedule upon a change of circumstances. The restitution schedule shall set a reasonable payment amount and shall not set payments in an amount that is likely to cause severe financial hardship to the defendant or his or her family.

(r) The willful failure to pay the amounts required by the payment schedule or to comply with the requirements of the county financial officer or the probation department pursuant to this section, if the defendant is able to pay or comply, is a violation of probation.

(s) In determining the defendant's ability to pay, the court shall consider whether the annual payment required, including any money or property seized to satisfy the restitution judgment, exceeds 15 percent of the defendant's taxable income for the previous year as identified on the defendant's tax return for the defendant's state of residence or on the defendant's federal tax return. If the defendant has filed a joint return, the defendant's income for purposes of this section shall be presumed to be the total of all wages earned by the defendant, plus one-half of all other nonsalary income listed on the tax return and accompanying schedules, unless the defendant demonstrates otherwise. The court shall also consider the defendant's current income and 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 payment schedule shall not be required.

(t) The defendant shall personally appear at any hearing held pursuant to any provision of this section unless the defendant is incarcerated or otherwise excused by the court, in which case the defendant may appear through counsel.

(u) Notwithstanding subdivision (d) of Section 1203.1, the county financial officer shall distribute proceeds collected by the county pursuant to this section as follows:

(1) If the restitution judgment has been satisfied, but the surcharge remains outstanding, all amounts paid by the defendant shall be kept by the county and applied to the surcharge.

(2) If the surcharge has been satisfied, but the restitution judgment has not been satisfied, all amounts submitted to the county shall be remitted to the victim.

(3) If neither judgment has been satisfied, the county shall remit 70 percent of the amounts collected to the victim. Those amounts shall be credited to the restitution judgment. The remaining 30 percent shall be retained by the county and credited toward the surcharge.

(v) Neither this section, nor the amendments to Section 12022.6 of the Penal Code enacted pursuant to Chapter 104 of the Statutes of 1992, are intended to lessen or otherwise mitigate sentences that could otherwise be imposed under any law in effect when the offense was committed.

(w) For the purpose of this section, a county may designate an appropriate employee of the county probation department, the department of revenue, or any other analogous county department to act as the county financial officer pursuant to this section.

(x) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date.

(y) This act shall be known as the Economic Crime Act of 1992.

SEC. 44. 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.

(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. 45. Section 1280.1 of the Penal Code is amended to read:

1280.1. (a) From the time of recording an affidavit for the justification of bail, the affidavit shall constitute an attachment lien governed by Sections 488.500, 488.510 and 489.310 of the Code of Civil Procedure in the amount of the bail undertaking, until exonerated, released, or otherwise discharged. Any release of the undertaking shall be effected by an order of the court, filed with the clerk of the court, with a certified copy of the order recorded in the office of the county recorder.

(b) If the bail is forfeited and summary judgment is entered, pursuant to Sections 1305 and 1306, the lien shall have the force and effect of a judgment lien, by recordation of an abstract of judgment, which, may be enforced and satisfied pursuant to Section 1306 as well as through the applicable execution process set forth in Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

SEC. 46. Section 1511 of the Penal Code, as added by Chapter 560 of the Statutes of 1989, is amended and renumbered to read:

1512. (a) In addition to petitions for a writ of mandate, prohibition, or review which the people are authorized to file pursuant to any other statute or pursuant to any court decision, the people may also seek review of an order granting a defendant's motion for severance or discovery by a petition for a writ of mandate or prohibition.

(b) In construing the legislative intent of subdivision (a), no inference shall be drawn from the amendment to Assembly Bill 1052 of the 1989–90 Regular Session of the Legislature which deleted reference to the case of People v. Superior Court, 69 Cal. 2d 491.

SEC. 47. Section 2677 of the Penal Code is amended to read:

2677. At the time of filing of a petition pursuant to Section 2676 by the person, or pursuant to Section 2675 by the warden, the court shall appoint the public defender or other attorney to represent the person unless the person is financially able to provide his or her own attorney. The attorney shall advise the person of his or her rights in relation to the proceeding in question and shall represent him or her before the court.

The court shall also appoint an independent medical expert on the person's behalf to examine the person's medical, mental, or emotional condition and to testify thereon, unless the person is financially able to obtain the expert testimony. However, if the person has given his or her informed consent to the proposed organic therapy, other than psychosurgery as referred to in subdivision (c) of Section 2670.5, and his or her attorney concurs in the proposed administration of the organic

therapy, the court may waive the requirement that an independent medical expert be appointed.

SEC. 48. Section 2717.4 of the Penal Code is amended to read:

2717.4. (a) There is hereby established within the Department of Corrections the Joint Venture Policy Advisory Board. The Joint Venture Policy Advisory Board shall consist of the Director of Corrections, who shall serve as chair, the Director of the Employment Development Department, and five members, to be appointed by the Governor, three of whom shall be public members, one of whom shall represent organized labor and one of whom shall represent industry. Five members shall constitute a quorum and a vote of the majority of the members in office shall be necessary for the transaction of the business of the board. Appointed members of the board shall be compensated at the rate of two hundred dollars ($200) for each day while on official business of the board and shall be reimbursed for necessary expenses. The initial terms of the members appointed by the Governor shall be for one year (one member), two years (two members), three years (one member), and four years (one member), as determined by the Governor. After the initial term, all members shall serve for four years.

(b) The board shall advise the Director of Corrections of policies that further the purposes of the Prison Inmate Labor Initiative of 1990 to be considered in the implementation of joint venture programs.

SEC. 49. 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 or 2933, 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), (2), or (3), 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), (2), and (3) shall be computed from the date of initial parole or from the date

of extension of parole pursuant to paragraph (3) 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 or from the date of extension of parole pursuant to paragraph (3).

(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.

SEC. 49.5. 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 or 2933, 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), (2), or (3), 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), (2), and (3) shall be computed from the date of initial parole or from the date of extension of parole pursuant to paragraph (3) 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 or from the date of extension of parole pursuant to paragraph (3).

(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 parole to engage them in treatment.

SEC. 50. Section 3000.1 of the Penal Code is amended to read:

3000.1. (a) In the case of any inmate sentenced under Section 1168 for any offense of first or second degree murder with a maximum term of life imprisonment, the period of parole, if parole is granted, shall be the remainder of the inmate's life.

(b) Notwithstanding any other provision of law, when any person referred to in subdivision (a) has been released on parole from the state prison, and has been on parole continuously for seven years in the case of any person imprisoned for first degree murder, and five years in the case of any person imprisoned for second degree murder, since release from confinement, the board shall, within 30 days, discharge that person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and transmit a copy of it to the parolee.

(c) In the event of a retention on parole, the parolee shall be entitled to a review by the board each year thereafter.

(d) There shall be a hearing as provided in Sections 3041.5 and 304l.7 within 12 months of the date of any revocation of parole to consider the release of the inmate on parole, and notwithstanding the provisions of paragraph (2) of subdivision (b) of Section 3041.5, there shall be annual parole consideration hearings thereafter, unless the person is released or otherwise ineligible for parole release. The panel or board shall release the person within one year of the date of the revocation unless it determines that the circumstances and gravity of the parole violation are such that consideration of the public safety requires a more lengthy period of incarceration or unless there is a new prison commitment following a conviction.

(e) The provisions of Section 3042 shall not apply to any hearing held pursuant to this section.

SEC. 51. Section 3058.9 of the Penal Code is amended to read:

3058.9. (a) Whenever any person confined to state prison is serving a term for the conviction of child abuse pursuant to Section 273a, 273ab, 273d, or any sex offense identified in statute as being perpetrated against a minor victim, or as ordered by any 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 sheriff or chief of police, or both, and the district attorney, having jurisdiction over the community in which the person was convicted and, in addition, the sheriff or chief of police, or both, and the district attorney having jurisdiction over the community in which 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.

(b) (1) The notification shall be made by mail at least 45 days prior to the scheduled release date, except as provided in paragraph (3). In all

cases, the notification shall include the name of the person who is scheduled to be released, whether or not the person is required to register with local law enforcement, and the community in which the person will reside. The notification shall specify the office within the Department of Corrections with the authority to make final determination and adjustments regarding parole location decisions.

(2) Notwithstanding any other provision of law, the Department of Corrections shall not restore credits nor take any administrative action resulting in an inmate being placed in a greater credit earning category that would result in notification being provided less than 45 days prior to an inmate's scheduled release date.

(3) 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 (4), the department shall provide notification as soon as practicable, but in no case less than 24 hours after the final decision is made regarding where the parolee will be released.

(4) 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 Department of Corrections 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) If the court orders the immediate release of an inmate, the department shall notify the sheriff or chief of police, or both, and the district attorney, having jurisdiction over the community in which the person was convicted and, in addition, the sheriff or chief of police, or both, and the district attorney, having jurisdiction over the community in which the person is scheduled to be released on parole or released

following a period of confinement pursuant to a parole revocation without a new commitment.

(d) The notification required by this section shall be made whether or not a request has been made under Section 3058.5.

In no case shall notice required by this section to the appropriate agency be later than the day of release on parole. If, after the 45-day notice is given to law enforcement and to the district attorney relating to an out-of-county placement, there is change of county placement, notice to the ultimate county of placement shall be made upon the determination of the county of placement.

(e) The notice required by this section shall satisfy the notice required by Section 3058.6 for any person whose offense is identified in both sections.

SEC. 52. Section 4011.1 of the Penal Code is amended to read:

4011.1. (a) Notwithstanding Section 29602 of the Government Code and any other provisions of this chapter, a county, city or the Department of the Youth Authority is authorized to make claim for and recovery of the costs of necessary hospital, medical, surgical, dental, or optometric care rendered to any prisoner confined in a county or city jail or any juvenile confined in a detention facility, who would otherwise be entitled to that care under the Medi-Cal Act (Chapter 7 (commencing with Section 14000) Part 3, Division 9, of the Welfare and Institutions Code), and who is eligible for that care on the first day of confinement or detention, to the extent that federal financial participation is available, or under the provisions of any private program or policy for that care, and the county, city or the Department of the Youth Authority shall be liable only for the costs of that care as cannot be recovered pursuant to this section. No person who is eligible for Medi-Cal shall be eligible for benefits under the provisions of this section, and no county or city or the Department of the Youth Authority is authorized to make a claim for any recovery of costs for services for that person, unless federal financial participation is available for all or part of the costs of providing services to that person under the Medi-Cal Act.

Notwithstanding any other provision of law, any county or city making a claim pursuant to this section and under the Medi-Cal Act shall reimburse the Health Care Deposit Fund for the state costs of paying those medical claims. Funds allocated to the county from the County Health Services Fund pursuant to Part 4.5 (commencing with Section 16700) of Division 9 of the Welfare and Institutions Code may be utilized by the county or city to make that reimbursement.

(b) Notwithstanding Section 29602 of the Government Code and any other provisions of this chapter, to the extent that recovery of costs of necessary hospital, medical, surgical, dental, or optometric care are not accomplished under subdivision (a), a county, city, or the Department of

the Youth Authority is authorized to make claim for and recover from a prisoner or a person legally responsible for a prisoner's care and maintenance the costs of necessary hospital, medical, surgical, dental, or optometric care rendered to any prisoner confined in a county or city jail, or any juvenile confined in a detention facility, where the prisoner or the person legally responsible for the prisoner's care and maintenance is financially able to pay for the prisoner's care, support, and maintenance. Nothing in this subdivision shall be construed to authorize a city, a county, or the Department of the Youth Authority to make a claim against a spouse of a prisoner.

(c) Necessary hospital, medical, dental, or optometric care, as used in this section, does not include care rendered with respect to an injury occurring during confinement in a county or city jail or juvenile detention facility, nor does it include any care or testing mandated by law.

(d) Subdivisions (b) and (c) shall apply only where there has been a determination of the present ability of the prisoner or responsible third party to pay all or a portion of the cost of necessary hospital, medical, surgical, dental, or optometric care. The person legally responsible for the prisoner's care shall provide a financial disclosure statement, executed under penalty of perjury, based on his or her past year's income tax return, to the Department of the Youth Authority. The city, county, or Department of the Youth Authority may request that the prisoner appear before a designated hearing officer for an inquiry into the ability of the prisoner or responsible third party to pay all or part of the cost of the care provided.

(e) Notice of this request shall be provided to the prisoner or responsible third party, which shall contain the following:

(1) A statement of the cost of the care provided to the prisoner.

(2) The prisoner's or responsible third party's procedural rights under this section.

(3) The time limit within which the prisoner or responsible third party may respond.

(4) A warning that if the prisoner or responsible third party fails to appear before, or respond to, the designated officer, the officer may petition the court for an order requiring him or her to make payment of the full cost of the care provided to the prisoner.

(f) At the hearing, the prisoner or responsible third party shall be entitled to, but shall not be limited to, all of the following rights:

(1) The right to be heard in person.

(2) The right to present witnesses and documentary evidence.

(3) The right to confront and cross-examine adverse witnesses.

(4) The right to have adverse evidence disclosed to him or her.

(5) The right to a written statement of the findings of the designated hearing officer.

(g) If the hearing officer determines that the prisoner or responsible third party has the present ability to pay all or a part of the cost, the officer shall set the amount to be reimbursed, and shall petition the court to order the prisoner or responsible third party to pay the sum to the city, county, or state, in the manner in which it finds reasonable and compatible to the prisoner's or responsible third party's financial ability. The court's order shall be enforceable in the manner provided for money judgments in a civil action under the Code of Civil Procedure.

(h) At any time prior to satisfaction of the judgment rendered according to the terms of this section, a prisoner or responsible third party against whom a judgment has been rendered, may petition the rendering court for a modification of the previous judgment on the grounds of a change of circumstance with regard to his or her ability to pay the judgment. The prisoner or responsible third party shall be advised of this right at the time the original judgment is rendered.

(i) As used in this section, ''ability to pay'' means the overall capacity of the prisoner or responsible third party to reimburse the costs, or a portion of the costs, of the care provided to the prisoner, and shall include, but not be limited to, all of the following:

(1) The prisoner's or responsible third party's present financial position.

(2) The prisoner's or responsible third party's discernible future financial position.

(3) The likelihood that the prisoner or responsible third party will be able to obtain employment in the future.

(4) Any other factor or factors which may bear upon the prisoner's or responsible third party's financial position.

SEC. 53. Section 5058.5 of the Penal Code, as added by Chapter 695 of the Statutes of 1992, is amended and renumbered to read:

5058.6. The Director of the Department of Corrections shall have the authority of a head of a department set forth in subdivision (e) of Section 11181 of the Government Code to issue subpoenas as provided in Article 2 (commencing with Section 11180) of Chapter 2 of Division 3 of Title 2 of the Government Code. The department shall adopt regulations on the policies and guidelines for the issuance of subpoenas.

SEC. 54. Section 6008 of the Penal Code is amended to read:

6008. The Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, and the Youthful Offender Parole Board shall report to the State Department of Health Services the results of the tuberculosis examinations required by Section 6006.

SEC. 55. Section 6126.5 of the Penal Code is amended to read:

6126.5. (a) Notwithstanding any other provision of law, the Inspector General during regular business hours or at any other time determined necessary by the Inspector General, shall have access to and authority to examine and reproduce, any and all books, accounts, reports, vouchers, correspondence files, documents, and other records, and to examine the bank accounts, money, or other property, of any entity defined in Section 6126 for any audit or investigation. Any officer or employee of any agency or entity having these records or property in his or her possession or under his or her control shall permit access to, and examination and reproduction thereof consistent with the provisions of this section, upon the request of the Inspector General or his or her authorized representative.

(b) For the purposes of access, examination, and reproduction as provided in subdivision (a), an authorized representative of the Inspector General is an employee or officer of the agency or public entity involved and is subject to any limitations on release of the information as may apply to an employee or officer of the agency or public entity. For the purpose of conducting any audit or investigation, the Inspector General or his or her authorized representative shall have access to the records and property of any public or private entity or person subject to review or regulation by the public agency or public entity being audited or investigated to the same extent that employees or officers of that agency or public entity have access. No provision of law providing for the confidentiality of any records or property shall prevent disclosure pursuant to subdivision (a), unless the provision specifically refers to and precludes access and examination and reproduction pursuant to subdivision (a).

(c) Any officer or person who fails or refuses to permit access, examination, or reproduction, as required by this section, is guilty of a misdemeanor.

(d) The Inspector General may require any employee of those entities specified in Section 6126 to be interviewed on a confidential basis. Any employee requested to be interviewed shall comply and shall have time afforded by the appointing authority for the purpose of an interview with the Inspector General or his or her designee. Any record created by an interview shall be deemed confidential for use by the Inspector General and the Secretary of the Youth and Adult Correctional Agency only. It is not the purpose of these communications to address disciplinary action or grievance procedures that may routinely occur. If it appears that the facts of the case could lead to punitive action, the Inspector General shall be subject to the provisions of the Public Safety Officers Procedural Bill of Rights Act (Section 3300 of the Government Code et seq.) as if the Inspector General were the employer.

SEC. 56. Section 6236 of the Penal Code is amended to read:

6236. This chapter shall be known as ''Restitution Centers.''

SEC. 57. Section 7012 of the Penal Code is amended to read:

7012. (a) The Department of Corrections shall submit to the Joint Legislative Prison Committee, the State Public Works Board, the appropriate county board of supervisors, and the local city council at least 30 days prior to the acquisition of real property for prison facilities to be located in Riverside and Del Norte Counties, an environmental assessment study, which shall include a discussion of impacts and mitigation measures, if necessary, for the following areas:

(1) Geology.

(2) Hydrology-groundwater.

(3) Water quality-surface waters.

(4) Plant and animal life-endangered and rare species.

(5) Air quality.

(6) Noise.

(7) Light and glare.

(8) Utilities-gas, electricity, telephone, solid waste, sewage disposal, and drinking water.

(9) Archaeology.

(10) Energy.

(b) The factors set forth in subdivision (a) shall be assessed only as they relate to the direct impacts caused off the site as a result of the construction, operation, and maintenance of the prison facility upon completion and occupancy.

(c) Notwithstanding any other provision of law, other than Section 7003, the approval of the study by the State Public Works Board is the only approval required for compliance with any applicable environmental requirements. The Public State Works Board shall not act on the study until it receives a recommendation from the Joint Legislative Prison Committee. Approval of the study by the State Public Works Board shall be final and binding on all parties.

(d) If the committee does not, by a majority vote of the committee membership, take any action on the study within 30 days after submittal, that inaction shall be deemed to be a recommendation of concurrence for the purposes of this section.

(e) Prior to providing a recommendation to the State Public Works Board, but within the 30-day period specified in subdivision (d), the committee shall hold a public hearing in the community in the vicinity of the proposed site. Notice of the hearing shall be published in a newspaper of general circulation in, or adjacent to, that community. The notice shall be at least one-quarter page in size. The city council and the county board of supervisors shall be invited to participate in the hearing.

SEC. 58. Section 11180 of the Penal Code is amended to read:

11180. The Interstate Compact for Adult Offender Supervision as contained herein is hereby enacted into law and entered into on behalf of the state with any and all other states legally joining therein in a form substantially as follows:

Preamble

Whereas: The interstate compact for the supervision of Parolees and Probationers was established in 1937. It is the earliest corrections ''compact'' established among the states and has not been amended since its adoption over 62 years ago.

Whereas: This compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines and it currently has jurisdiction over more than a quarter of a million offenders.

Whereas: The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements, and sex offender registration.

Whereas: After hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability.

Whereas: Upon the adoption of this Interstate Compact for Adult Offender Supervision, it is the intention of the Legislature to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers on the effective date of this Compact.

Be it enacted by the General Assembly (Legislature) of the state of California.

Short title: This Act may be cited as The Interstate Compact for Adult Offender Supervision.

Article I. Purpose

The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the Bylaws and Rules of this compact to travel across state lines both to and from each compacting state in a manner so as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The

compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states: to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits, and obligations of the compact among the compacting states. In addition, this compact will: create an Interstate Commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of Compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct non-compliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in these types of activities. The compacting states recognize that there is no ''right'' of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and Bylaws and Rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and are therefore public business.

## Article II. Definitions

As used in this compact, unless the context clearly requires a different construction:

''Adult'' means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

''By-laws'' mean those by-laws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission's actions or conduct.

''Compact Administrator'' means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

''Compacting state'' means any state which has enacted the enabling legislation for this compact.

''Commissioner'' means the voting representative of each compacting state appointed pursuant to Article III of this compact.

''Interstate Commission'' means the Interstate Commission for Adult Offender Supervision established by this compact.

''Member'' means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

''Non Compacting state'' means any state which has not enacted the enabling legislation for this compact.

''Offender'' means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

''Person'' means any individual, corporation, business enterprise, or other legal entity, either public or private.

''Rules'' means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states.

''State'' means a state of the United States, the District of Columbia, and any other territorial possessions of the United States.

''State Council'' means the resident members of the State Council for Interstate Adult Offender Supervision created by each state under Article III of this compact.

## Article III. The Compact Commission

The compacting states hereby create the ''Interstate Commission for Adult Offender Supervision.''

The Interstate Commission shall be a body corporate and joint agency of the compacting states.

The Interstate Commission shall have all the responsibilities, powers, and duties set forth herein, including the power to sue and be sued, and

whatever additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

The Interstate Commission shall consist of Commissioners selected and appointed by resident members of the State Council for Interstate Adult Offender Supervision for each state. In addition to the Commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations; these noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All noncommissioner members of the Interstate Commission shall be ex-officio (nonvoting) members. The Interstate Commission may provide in its by-laws for these additional, ex-officio, nonvoting members as it deems necessary. Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission. The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

The Interstate Commission shall establish an Executive Committee which shall include commission officers, members and others as shall be determined by the By-laws. The Executive Committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the Compact. The Executive Committee oversees the day-to-day activities managed by the Executive Director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws and as directed by the Interstate Commission and performs other duties as directed by the Commission or set forth in the By-laws.

## Article IV. The State Council

Each member state shall create a State Council for Interstate Adult Offender Supervision which shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in this capacity under or pursuant to applicable law of the member state. While each member state may determine the membership

of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups and compact administrators. Each compacting state retains the right to determine the qualifications of the Compact Administrator who shall be appointed by the state council or by the Governor in consultation with the Legislature and the Judiciary. In addition to appointment of its commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state, including, but not limited to, development of policy concerning operations and procedures of the compact within that state.

Article V. Powers and Duties of the Interstate Commission

The Interstate Commission shall have the following powers:

To adopt a seal and suitable by-laws governing the management and operation of the Interstate Commission.

To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any by-laws adopted and rules promulgated by the compact commission.

To enforce compliance with compact provisions, Interstate Commission rules, and by-laws, using all necessary and proper means, including, but not limited to, the use of judicial process.

To establish and maintain offices.

To purchase and maintain insurance and bonds.

To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs.

To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

To elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same.

To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

To establish a budget and make expenditures and levy dues as provided in Article X of this compact.

To sue and be sued.

To provide for dispute resolution among Compacting States.

To perform whatever functions as may be necessary or appropriate to achieve the purposes of this compact.

To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. These reports shall also include any recommendations that may have been adopted by the Interstate Commission.

To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in these activities.

To establish uniform standards for the reporting, collecting, and exchanging of data.

## Article VI. Organization and Operation of the Interstate Commission

Section A. By-laws

The Interstate Commission shall, by a majority of the Members, within twelve months of the first Interstate Commission meeting, adopt By-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact, including, but not limited to:

Establishing the fiscal year of the Interstate Commission.

Establishing an executive committee and other committees as may be necessary.

Providing reasonable standards and procedures:

(i) For the establishment of committees.

(ii) Governing any general or specific delegation of any authority or function of the Interstate Commission; providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each meeting; establishing the titles and responsibilities of the officers of the Interstate Commission; providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission.

Notwithstanding any civil service or other similar laws of any Compacting State, the By-laws shall exclusively govern the personnel policies and programs of the Interstate Commission; and providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations; providing transition rules for ''start up'' administration of the compact; establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

The Interstate Commission shall, by a majority of the Members, elect from among its Members a chairperson and a vice chairperson, each of whom shall have authorities and duties as may be specified in the By-laws. The chairperson, or in his or her absence or disability, the vice chairperson, shall preside at all meetings of the Interstate Commission. The Officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

The Interstate Commission shall, through its executive committee, appoint or retain an executive director for a period, upon terms and conditions and for compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, and hire and supervise other staff as may be authorized by the Interstate Commission, but shall not be a member.

Section C. Corporate Records of the Interstate Commission

The Interstate Commission shall maintain its corporate books and records in accordance with the By-laws.

Section D. Qualified Immunity, Defense and Indemnification

The Members, officers, executive director and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities; provided, that nothing in this paragraph shall be construed to protect anyone from suit and/or liability for any damage, loss, injury or liability caused by their intentional or willful and wanton misconduct. The Interstate Commission shall defend the Commissioner of a Compacting State, or his or her representatives or employees, or the Interstate Commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or

omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities; provided, that the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of that person.

The Interstate Commission shall indemnify and hold the Commissioner of a Compacting State, the appointed designee or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgement obtained against anyone arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that person had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of the person.

## Article VII. Activities of the Interstate Commission

The Interstate Commission shall meet and take whatever actions as are consistent with the provisions of this Compact.

Except as otherwise provided in this Compact and unless a greater percentage is required by the By-laws, in order to constitute an act of the Interstate Commission, the act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

Each Member of the Interstate Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Interstate Commission. A Member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a State Council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The By-laws may provide for Members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the Members, shall call additional meetings.

The Interstate Commission's By-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating the Rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission shall promulgate Rules consistent with the principles contained in the ''Government in Sunshine Act,'' 5 U.S.C. Section 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

Relate solely to the Interstate Commission's internal personnel practices and procedures.

Disclose matters specifically exempted from disclosure by statute.

Disclose trade secrets or commercial or financial information which is privileged or confidential.

Involve accusing any person of a crime, or formally censuring any person.

Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Disclose investigatory records compiled for law enforcement purposes.

Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of the entity.

Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity.

Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed

in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflected in the vote of each Member on the question). All documents considered in connection with any action shall be identified in the minutes. The Interstate Commission shall collect standardized data concerning the interstate movement of offenders as directed through its By-laws and Rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

Article VIII. Rulemaking Functions of the Interstate Commission

The Interstate Commission shall promulgate Rules in order to effectively and efficiently achieve the purposes of the Compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

Rulemaking shall occur pursuant to the criteria set forth in this Article and the By-laws and Rules adopted pursuant thereto. Rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. section 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended (hereinafter ''APA''). All Rules and amendments shall become binding as of the date specified in each Rule or amendment.

If a majority of the legislatures of the Compacting States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then the Rule shall have no further force and effect in any Compacting State.

When promulgating a Rule, the Interstate Commission shall:

Publish the proposed Rule stating with particularity the text of the Rule which is proposed and the reason for the proposed Rule.

Allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available.

Provide an opportunity for an informal hearing.

Promulgate a final Rule and its effective date, if appropriate, based on the rulemaking record.

Not later than sixty days after a Rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of the Rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence, (as defined in the APA), in the rulemaking record, the court shall hold the Rule unlawful and set it aside. Subjects

to be addressed within 12 months after the first meeting must at a minimum include:

Notice to victims and opportunity to be heard.

Offender registration and compliance.

Violations/returns.

Transfer procedures and forms.

Eligibility for transfer.

Collection of restitution and fees from offenders.

Data collection and reporting.

The level of supervision to be provided by the receiving state.

Transition rules governing the operation of the compact and the Interstate Commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact.

Mediation, arbitration and dispute resolution.

The existing rules governing the operation of the previous compact superceded by this Act shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder.

Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

## Article IX. Oversight, Enforcement, and Dispute Resolution by the Interstate Commission

### Section A. Oversight

The Interstate Commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor the activities being administered in Non-compacting States which may significantly affect Compacting States.

The courts and executive agencies in each Compacting State shall enforce this Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. In any judicial or administrative proceeding in a Compacting State pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any proceeding, and shall have standing to intervene in the proceeding for all purposes.

### Section B. Dispute Resolution

The Compacting States shall report to the Interstate Commission on issues or activities of concern to them, and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the Compact and which may arise among Compacting States and Non-compacting States.

The Interstate Commission shall enact a By-law or promulgate a Rule providing for both mediation and binding dispute resolution for disputes among the Compacting States.

Section C. Enforcement

The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Article XII, Section B, of this compact.

## Article X. Finance

The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

The Interstate Commission shall levy on and collect an annual assessment from each Compacting State to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each Compacting State and shall promulgate a Rule binding upon all Compacting States which governs said assessment.

The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its By-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Article XI. Compacting States, Effective Date and Amendment

Any state, as defined in Article II of this compact, is eligible to become a Compacting State. The Compact shall become effective and binding upon legislative enactment of the Compact into law by no less than 35 of the States. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the 35th jurisdiction. Thereafter, it shall become effective and binding, as to any other Compacting State, upon enactment of the Compact into law by that State. The governors of Non-member states or their designees will be invited to participate in Interstate Commission activities on a non-voting basis prior to adoption of the compact by all states and territories of the United States.

Amendments to the Compact may be proposed by the Interstate Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Interstate Commission and the Compacting States unless and until it is enacted into law by unanimous consent of the Compacting States.

Article XII. Withdrawal, Default, Termination, and Judicial Enforcement

Section A. Withdrawal

Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; provided, that a Compacting State may withdraw from the Compact (''Withdrawing State'') by enacting a statute specifically repealing the statute which enacted the Compact into law.

The effective date of withdrawal is the effective date of the repeal. The Withdrawing State shall immediately notify the Chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this Compact in the Withdrawing State. The Interstate Commission shall notify the other Compacting States of the Withdrawing State's intent to withdraw within sixty days of its receipt thereof. The Withdrawing State is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

Reinstatement following withdrawal of any Compacting State shall occur upon the Withdrawing State reenacting the Compact or upon a later date as determined by the Interstate Commission.

Section B. Default

If the Interstate Commission determines that any Compacting State has at any time defaulted (''Defaulting State'') in the performance of any of its obligations or responsibilities under this Compact, the By-laws or

any duly promulgated Rules the Interstate Commission may impose any or all of the following penalties: Fines, fees and costs in amounts as are deemed to be reasonable as fixed by the Interstate Commission. Remedial training and technical assistance as directed by the Interstate Commission; suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the By-laws and Rules have been exhausted. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the State Council.

The grounds for default include, but are not limited to, failure of a Compacting State to perform the obligations or responsibilities imposed upon it by this compact, Interstate Commission By-laws, or duly promulgated Rules. The Interstate Commission shall immediately notify the Defaulting State in writing of the penalty imposed by the Interstate Commission on the Defaulting State pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the Defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the Compacting States and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a Defaulting State, the Interstate Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer and the Majority and Minority Leaders of the Defaulting State's legislature and the state council of the termination.

The Defaulting State is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

The Interstate Commission shall not bear any costs relating to the Defaulting State unless otherwise mutually agreed upon between the Interstate Commission and the Defaulting State. Reinstatement following termination of any Compacting State requires both a reenactment of the Compact by the Defaulting State and the approval of the Interstate Commission pursuant to the Rules.

Section C. Judicial Enforcement

The Interstate Commission may, by majority vote of the Members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the Federal District where the Interstate Commission has its offices to

enforce compliance with the provisions of the Compact, its duly promulgated Rules and By-laws, against any Compacting State in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all litigation costs including reasonable attorneys fees.

Section D. Dissolution of Compact

The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.

Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up and any surplus funds shall be distributed in accordance with the By-laws.

## Article XIII. Severability and Construction

The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

The provisions of this Compact shall be liberally constructed to effectuate its purposes.

## Article XIV. Binding Effect of Compact and Other Laws

Section A. Other Laws

Nothing herein prevents the enforcement of any other law of a Compacting State that is not inconsistent with this Compact.

All Compacting States' laws conflicting with this Compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

All lawful actions of the Interstate Commission, including all Rules and By-laws promulgated by the Interstate Commission, are binding upon the Compacting States.

All agreements between the Interstate Commission and the Compacting States are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the Compacting States, the Interstate Commission may issue advisory opinions regarding meaning or interpretation.

In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by the provision upon the Interstate Commission shall be ineffective and the obligations, duties, powers or jurisdiction shall remain in the

Compacting State and shall be exercised by the agency thereof to which the obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.

SEC. 59. Section 11418 of the Penal Code is amended to read:

11418. (a) (1) Any person, without lawful authority, who possesses, develops, manufactures, produces, transfers, acquires, or retains any weapon of mass destruction, shall be punished by imprisonment in the state prison for 3, 6, or 9 years.

(2) Any person who commits a violation of paragraph (1) and who has been previously convicted of Section 11411, 11412, 11413, 11460, 12303.1, 12303.2, or 12303.3 shall be punished by imprisonment in the state prison for 4, 8, or 12 years.

(b) (1) Any person who uses or directly employs against another person a weapon of mass destruction in a form that may cause widespread, disabling illness, or injury in human beings shall be punished by imprisonment in the state prison for life.

(2) Any person who uses a weapon of mass destruction in a form that may cause widespread damage to and disruption of the water or food supply shall be punished by imprisonment in the state prison for 4, 8, or 12 years, and by a fine of not more than one hundred thousand dollars ($100,000).

(3) Any person who maliciously uses against animals or crops a weapon of mass destruction in a form that may cause widespread damage to and substantial diminution in the value of stock animals or crops shall be punished by a fine of not more than one hundred thousand dollars ($100,000), or by imprisonment in the state prison for 4, 8, or 12 years, or by both that fine and imprisonment.

(c) Any person who uses a weapon of mass destruction in a form that may cause widespread and significant damage to public natural resources, including coastal waterways and beaches, public parkland, surface waters, ground water, and wildlife, shall be punished by imprisonment in the state prison for 3, 4, or 6 years.

(d) Any person who uses recombinant technology or any other biological advance to create new pathogens or more virulent forms of existing pathogens for the purposes specified in this section, shall be punished by imprisonment in a county jail for up to one year or in the state prison for 3, 6, or 9 years, or by a fine of not more than two hundred fifty thousand dollars ($250,000), or by both that fine and imprisonment.

(e) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

SEC. 60. Section 12022.53 of the Penal Code is amended to read:

12022.53. (a) This section applies to the following felonies:

(1) Section 187 (murder).
(2) Section 203 or 205 (mayhem).
(3) Section 207, 209, or 209.5 (kidnapping).
(4) Section 211 (robbery).
(5) Section 215 (carjacking).
(6) Section 220 (assault with intent to commit a specified felony).
(7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).
(8) Section 261 or 262 (rape).
(9) Section 264.1 (rape or sexual penetration in concert).
(10) Section 286 (sodomy).
(11) Section 288 or 288.5 (lewd act on a child).
(12) Section 288a (oral copulation).
(13) Section 289 (sexual penetration).
(14) Section 4500 (assault by a life prisoner).
(15) Section 4501 (assault by a prisoner).
(16) Section 4503 (holding a hostage by a prisoner).
(17) Any felony punishable by death or imprisonment in the state prison for life.
(18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony personally used a firearm, shall be punished by a term of imprisonment of 10 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), and who in the commission of that felony intentionally and personally discharged a firearm, shall be punished by a term of imprisonment of 20 years in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(d) Notwithstanding any other provision of law, any person who is convicted of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 12034, and who in the commission of that felony intentionally and personally discharged a firearm and proximately caused great bodily injury, as defined in Section 12022.7, or death, to any person other than an accomplice, shall be punished by a term of imprisonment of 25 years to life in the state prison, which shall be imposed in addition and consecutive to the punishment prescribed for that felony.

(e) (1) The enhancements specified in this section shall apply to any person charged as a principal in the commission of an offense that includes an allegation pursuant to this section when a violation of both this section and subdivision (b) of Section 186.22 are pled and proved.

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1 shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5, or 12022.55 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in Section 12022.7, 12022.8, or 12022.9 shall not be imposed on a person in addition to an enhancement imposed pursuant to subdivision (d).

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) Notwithstanding Section 1385 or any other provision of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a

coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(*l*) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

SEC. 61. Section 12094 of the Penal Code is amended to read:

12094. (a) Any person with knowledge of any change, alteration, removal, or obliteration described herein, who buys, receives, disposes of, sells, offers for sale, or has in his or her possession any pistol, revolver, or other firearm which has had the name of the maker, model, or the manufacturer's number or other mark of identification including any distinguishing number or mark assigned by the Department of Justice changed, altered, removed, or obliterated is guilty of a misdemeanor.

(b) Subdivision (a) does not apply to any of the following:

(1) The acquisition or possession of a firearm described in subdivision (a) by any member of the military forces of this state or of the United States, while on duty and acting within the scope and course of his or her employment.

(2) The acquisition or possession of a firearm described in subdivision (a) by any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, while on duty and acting within the scope and course of his or her employment.

(3) The acquisition or possession of a firearm described in subdivision (a) by any employee of a forensic laboratory, while on duty and acting within the scope and course of his or her employment.

(4) The possession and disposition of a firearm described in subdivision (a) by a person who meets all of the following:

(A) He or she is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code, or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the firearm no longer than was necessary to deliver the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency in order to deliver the firearm to the law enforcement agency for the agency's disposition according to law.

(D) If the person is transporting the firearm to a law enforcement agency, he or she has given prior notice to the law enforcement agency

that he or she is transporting the firearm to that law enforcement agency for that agency's disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

SEC. 62. Section 12288 of the Penal Code is amended to read:

12288. Any individual may arrange in advance to relinquish an assault weapon to a police or sheriff's department. The assault weapon shall be transported in accordance with Section 12026.1.

SEC. 63. Section 13519.4 of the Penal Code is amended to read:

13519.4. (a) On or before August 1, 1993, the commission shall develop and disseminate guidelines and training for all law enforcement officers in California as described in subdivision (a) of Section 13510 and who adhere to the standards approved by the commission, on the racial and cultural differences among the residents of this state. The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

(b) The course of basic training for law enforcement officers shall, no later than August 1, 1993, include adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of cultural awareness and diversity.

(c) For the purposes of this section, ''culturally diverse'' and ''cultural diversity'' include, but are not limited to, gender and sexual orientation issues. The Legislature finds and declares as follows:

(1) Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated.

(2) Motorists who have been stopped by the police for no reason other than the color of their skin or their apparent nationality or ethnicity are the victims of discriminatory practices.

(3) It is the intent of the Legislature in enacting the changes to Section 13519.4 of the Penal Code made by the act that added this subdivision that more than additional training is required to address the pernicious practice of racial profiling and that enactment of this bill is in no way dispositive of the issue of how the state should deal with racial profiling.

(4) The working men and women in California law enforcement risk their lives every day. The people of California greatly appreciate the hard work and dedication of law enforcement officers in protecting public safety. The good name of these officers should not be tarnished by the actions of those few who commit discriminatory practices.

(d) ''Racial profiling,'' for purposes of this section, is the practice of detaining a suspect based on a broad set of criteria which casts suspicion on an entire class of people without any individualized suspicion of the particular person being stopped.

(e) A law enforcement officer shall not engage in racial profiling.

(f) Every law enforcement officer in this state shall participate in expanded training as prescribed and certified by the Commission on Peace Officers Standards and Training. Training shall begin being offered no later than January 1, 2002. The curriculum shall be created by the commission in collaboration with a five-person panel, appointed no later than March 1, 2001, as follows: the Governor shall appoint three members and one member each shall be appointed by the Senate Committee on Rules and the Speaker of the Assembly. Each appointee shall be appointed from among prominent members of the following organizations:

(1) State Conference of the NAACP.
(2) Brotherhood Crusade.
(3) Mexican American Legal Defense and Education Fund.
(4) The League of United Latin American Citizens.
(5) American Civil Liberties Union.
(6) Anti-Defamation League.
(7) California NOW.
(8) Asian Pacific Bar of California.
(9) The Urban League.

(g) Members of the panel shall not be compensated, except for reasonable per diem expenses related to their work for panel purposes.

(h) The curriculum shall utilize the Tools for Tolerance for Law Enforcement Professionals framework and shall include and examine the patterns, practices, and protocols that make up racial profiling. This training shall prescribe patterns, practices, and protocols that prevent racial profiling. In developing the training, the commission shall consult with appropriate groups and individuals having an interest and expertise in the field of racial profiling. The course of instruction shall include, but not be limited to, adequate consideration of each of the following subjects:

(1) Identification of key indices and perspectives that make up cultural differences among residents in a local community.

(2) Negative impact of biases, prejudices, and stereotyping on effective law enforcement, including examination of how historical perceptions of discriminatory enforcement practices have harmed police-community relations.

(3) The history and the role of the civil rights movement and struggles and their impact on law enforcement.

(4) Specific obligations of officers in preventing, reporting, and responding to discriminatory or biased practices by fellow officers.

(5) Perspectives of diverse, local constituency groups and experts on particular cultural and police-community relations issues in a local area.

(i) Once the initial basic training is completed, each law enforcement officer in California as described in subdivision (a) of Section 13510 who adheres to the standards approved by the commission shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial and cultural trends.

(j) The Legislative Analyst shall conduct a study of the data being voluntarily collected by those jurisdictions that have instituted a program of data collection with regard to racial profiling, including, but not limited to, the California Highway Patrol, the City of San Jose, and the City of San Diego, both to ascertain the incidence of racial profiling and whether data collection serves to address and prevent such practices, as well as to assess the value and efficacy of the training herein prescribed with respect to preventing local profiling. The Legislative Analyst may prescribe the manner in which the data is to be submitted and may request that police agencies collecting such data submit it in the requested manner. The Legislative Analyst shall provide to the Legislature a report and recommendations with regard to racial profiling by July 1, 2002.

SEC. 64. The heading of Title 10.5 (commencing with Section 14150) of Part 4 of the Penal Code is amended and renumbered to read:

## TITLE 10.6. COMMUNITY CONFLICT RESOLUTION PROGRAMS

SEC. 65. 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 in the state prison, 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 Bank and Corporation Tax Law, of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not that falsity

or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Personal Income Tax Law or the Bank and Corporation Tax Law, or by any regulation pursuant to that law, or procures the same to be falsely or fraudulently executed or advises, aids in, or connives at that execution.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 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. 65.5. 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 in the state prison, 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. 66. Section 1808.21 of the Vehicle Code is amended to read:

1808.21. (a) Any residence address in any record of the department is confidential and shall not be disclosed to any person, except a court, law enforcement agency, or other government agency, or as authorized in Section 1808.22 or 1808.23.

(b) Release of any mailing address or part thereof in any record of the department may be restricted to a release for purposes related to the reasons for which the information was collected, including, but not limited to, the assessment of driver risk, or ownership of vehicles or vessels. This restriction does not apply to a release to a court, a law enforcement agency, or other governmental agency, or a person who has been issued a requester code pursuant to Section 1810.2.

(c) Any person providing the department with a mailing address shall declare, under penalty of perjury, that the mailing address is a valid, existing, and accurate mailing address and shall consent to receive service of process pursuant to subdivision (b) of Section 415.20, subdivision (a) of Section 415.30, and Section 416.90 of the Code of Civil Procedure at the mailing address.

(d) (1) Any registration or driver's license record of a person may be suppressed from any other person, except those persons specified in subdivision (a), if the person requesting the suppression submits verification acceptable to the department that he or she has reasonable cause to believe either of the following:

(A) That he or she is the subject of stalking, as specified in Section 1708.7 of the Civil Code or Section 646.9 of the Penal Code.

(B) That there exists a threat of death or great bodily injury to his or her person, as defined in Section 12022.7 of the Penal Code.

(2) Upon suppression of a record, each request for information about that record shall be authorized by the subject of the record or verified as legitimate by other investigative means by the department before the information is released.

(e) Suppression of a record pursuant to subdivision (d) shall occur for one year after approval by the department. Not less than 60 days prior to the date the suppression of the record would otherwise expire, the department shall notify the subject of the record of its impending expiration. The suppression may be continued for two additional periods of one year each if a letter is submitted to the department stating that the person continues to have a reasonable cause to believe that he or she is the subject of stalking or that there exists a threat of death or great bodily injury as described in subparagraph (B) of paragraph (1) of subdivision (d). The suppression may be additionally continued at the end of the second one-year period by submitting verification acceptable to the department. The notification described in this subdivision shall instruct the person of the method to reapply for record suppression.

(f) For the purposes of subdivisions (d) and (e), ''verification acceptable to the department'' means recent police reports, court documentation, or other documentation from a law enforcement agency.

SEC. 67. Section 13202.4 of the Vehicle Code is amended to read:

13202.4. (a) (1) For each conviction of a minor who commits a public offense involving a pistol, revolver, or other firearm capable of being concealed upon the person, the court may suspend the minor's driving privilege for five years. If the minor convicted does not yet have the privilege to drive, the court may order the department to delay issuing the privilege to drive for five years subsequent to the time the person becomes legally eligible to drive. For each successive offense, the court may suspend the minor's driving privilege for those possessing a license or delay the eligibility for those not in possession of a license at the time of their conviction for one additional year.

(2) (A) Any minor whose driving privilege is suspended pursuant to this section may elect to reduce the period of suspension or delay imposed by the court by performing community service under the supervision of the probation department if both of the following conditions are met:

(i) At least 50 percent of the suspension or delay period has expired.

(ii) The person has not been the subject of any other criminal conviction during the suspension or delay period.

(B) If the conditions specified in subparagraph (A) are met, the period of suspension or delay ordered under paragraph (1) shall be reduced at the rate of one day for each hour of community service performed.

(3) As used in this section, the term ''conviction'' includes the findings in juvenile proceedings specified in Section 13105.

(b) (1) Whenever the court suspends driving privileges pursuant to subdivision (a), the court in which the conviction is had shall require all driver's licenses held by the person to be surrendered to the court. The court shall, within 10 days following the conviction, transmit a certified abstract of the conviction, together with any driver's licenses surrendered, to the department.

(2) Violations of restrictions imposed pursuant to this section are subject to Section 14603.

(c) When the court is considering suspending or delaying driving privileges pursuant to subdivision (a), the court shall consider if a personal or family hardship exists that requires the person to have a driver's license for his or her own, or a member of his or her family's, employment or medically related purposes.

(d) The suspension, restriction, or delay of driving privileges pursuant to this section shall be in addition to any penalty imposed upon conviction for the offense.

SEC. 68. Section 22658.1 of the Vehicle Code is amended to read:

22658.1. (a) Any towing company that, in removing a vehicle, cuts, removes, otherwise damages, or leaves open a fence without the prior approval of the property owner or the person in charge of the property shall then and there do either of the following:

(1) Locate and notify the owner or person in charge of the property of the damage or open condition of the fence, the name and address of the towing company, and the license, registration, or identification number of the vehicle being removed.

(2) Leave in a conspicuous place on the property the name and address of the towing company, and the license, registration, or identification number of the vehicle being removed, and shall without unnecessary delay, notify the police department of the city in which the property is located, or if the property is located in unincorporated territory, either the sheriff or the local headquarters of the Department of the California Highway Patrol, of that information and the location of the damaged or opened fence.

(b) Any person failing to comply with all the requirements of this section is guilty of an infraction.

SEC. 69. Section 302 of the Welfare and Institutions Code is amended to read:

302. (a) A juvenile court may assume jurisdiction over a child described in Section 300 regardless of whether the child was in the physical custody of both parents or was in the sole legal or physical custody of only one parent at the time that the events or conditions occurred that brought the child within the jurisdiction of the court.

(b) Unless their parental rights have been terminated, both parents shall be notified of all proceedings involving the child. In any case where the social worker is required to provide a parent or guardian with notice of a proceeding at which the social worker intends to present a report, the social worker shall also provide both parents, whether custodial or noncustodial, or any guardian, or the counsel for the parent or guardian a copy of the report prior to the hearing, either personally or by first-class mail. The social worker shall not charge any fee for providing a copy of a report required by this subdivision. The social worker shall keep confidential the address of any parent who is known to be the victim of domestic violence.

(c) When a child is adjudged a dependent of the juvenile court, any issues regarding custodial rights between his or her parents shall be determined solely by the juvenile court, as specified in Sections 304, 361.2, and 362.4, so long as the child remains a dependent of the juvenile court.

(d) Any custody or visitation order issued by the juvenile court at the time the juvenile court terminates its jurisdiction pursuant to Section 362.4 regarding a child who has been previously adjudged to be a dependent child of the juvenile court shall be a final judgment and shall remain in effect after that jurisdiction is terminated. The order shall not be modified in a proceeding or action described in Section 3021 of the Family Code unless the court finds that there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child.

SEC. 70. Section 319.1 of the Welfare and Institutions Code is amended to read:

319.1. When the court finds a minor to be a person described by Section 300, and believes that the minor may need specialized mental health treatment while the minor is unable to reside in his or her natural home, the court shall notify the director of the county mental health department in the county where the minor resides. The county mental health department shall perform the duties required under Section 5694.7 for all those minors.

Nothing in this section shall restrict the provisions of emergency psychiatric services to those minors who are involved in dependency cases and have not yet reached the point of adjudication or disposition, nor shall it operate to restrict evaluations at an earlier stage of the proceedings or to restrict orders removing the minor from a detention facility for psychiatric treatment.

SEC. 71. Section 367 of the Welfare and Institutions Code is amended to read:

367. (a) Whenever a person has been adjudged a dependent child of the juvenile court and has been committed or otherwise disposed of as

provided in this chapter for the care of dependent children of the juvenile court, the court may order that the dependent child be detained in a suitable place designated as the court deems fit until the execution of the order of commitment or of other disposition.

(b) In any case in which a child is detained for more than 15 days pending the execution of the order of commitment or of any other disposition, the court shall periodically review the case to determine whether the delay is reasonable. These periodic reviews shall be held at least every 15 days, commencing from the time the child was initially detained pending the execution of the order of commitment or of any other disposition, and during the course of each review the court shall inquire regarding the action taken by the social worker to carry out its order, the reasons for the delay, and the effect of the delay upon the child.

SEC. 72. Section 602 of the Welfare and Institutions Code is amended to read:

602. (a) Except as provided in subdivision (b), any person who is under the age of 18 years when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

(b) Any person who is alleged, when he or she was 14 years of age or older, to have committed one of the following offenses shall be prosecuted under the general law in a court of criminal jurisdiction:

(1) Murder, as described in Section 187 of the Penal Code, if one of the circumstances enumerated in subdivision (a) of Section 190.2 of the Penal Code is alleged by the prosecutor, and the prosecutor alleges that the minor personally killed the victim.

(2) The following sex offenses, if the prosecutor alleges that the minor personally committed the offense, and if the prosecutor alleges one of the circumstances enumerated in the One Strike law, subdivision (d) or (e) of Section 667.61 of the Penal Code, applies:

(A) Rape, as described in paragraph (2) of subdivision (a) of Section 261 of the Penal Code.

(B) Spousal rape, as described in paragraph (1) of subdivision (a) of Section 262 of the Penal Code.

(C) Forcible sex offenses in concert with another, as described in Section 264.1 of the Penal Code.

(D) Forcible lewd and lascivious acts on a child under the age of 14 years, as described in subdivision (b) of Section 288 of the Penal Code.

(E) Forcible sexual penetration, as described in subdivision (a) of Section 289 of the Penal Code.

(F) Sodomy or oral copulation in violation of Section 286 or 288a of the Penal Code, by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(G) Lewd and lascivious acts on a child under the age of 14 years, as defined in subdivision (a) of Section 288, unless the defendant qualifies for probation under subdivision (c) of Section 1203.066 of the Penal Code.

SEC. 73. Section 602.5 of the Welfare and Institutions Code, as added by Chapter 996 of the Statutes of 1999, is amended and renumbered to read:

602.3. (a) Notwithstanding any other law and pursuant to the provisions of this section, the juvenile court shall commit any minor adjudicated to be a ward of the court for the personal use of a firearm in the commission of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code, to placement in a juvenile hall, ranch, camp, or with the Department of the Youth Authority.

(b) A court may impose a treatment-based alternative placement order on any minor subject to this section if the court finds the minor has a mental disorder requiring intensive treatment. Any alternative placement order under this subdivision shall be made on the record, in writing, and in accordance with Article 3 (commencing with Section 6550) of Chapter 2 of Part 2 of Division 6.

SEC. 74. Section 635.1 of the Welfare and Institutions Code is amended to read:

635.1. When the court finds a minor to be a person described by Section 602 and believes the minor may need specialized mental health treatment while the minor is unable to reside in his or her natural home, the court shall notify the director of the county mental health department in the county where the minor resides. The county mental health department shall perform the duties required under Section 5697.5 for all those minors.

Nothing in this section shall restrict the provision of emergency psychiatric services to those minors who have not yet reached the point of adjudication or disposition, nor shall it operate to restrict evaluations at an earlier stage of the proceedings or to restrict the use of Sections 4011.6 and 4011.8 of the Penal Code.

SEC. 75. Section 730.7 of the Welfare and Institutions Code, as added by Chapter 996 of the Statutes of 1999, is amended and renumbered to read:

730.8. (a) Except as provided in subdivision (b), the court shall require any minor who is ordered to pay restitution pursuant to Section 730.6, or to perform community service, to report to the court on his or her compliance with the court's restitution order or order for community service, or both, no less than annually until the order is fulfilled.

(b) For any minor committed to the Department of the Youth Authority, the department shall monitor the compliance with any order of the court that requires the minor to pay restitution. Upon the minor's discharge from the Department of the Youth Authority, the department shall notify the court regarding the minor's compliance with an order to pay restitution.

SEC. 76. The heading of Article 18.5 (commencing with Section 743) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is amended and renumbered to read:

Article 18.6. Repeat Offender Prevention Project

SEC. 77. Section 5270.55 of the Welfare and Institutions Code is amended to read:

5270.55. (a) Whenever it is contemplated that a gravely disabled person may need to be detained beyond the end of the 14-day period of intensive treatment and prior to proceeding with an additional 30-day certification, the professional person in charge of the facility shall cause an evaluation to be made, based on the patient's current condition and past history, as to whether it appears that the person, even after up to 30 days of additional treatment, is likely to qualify for appointment of a conservator. If the appointment of a conservator appears likely, the conservatorship referral shall be made during the 14-day period of intensive treatment.

(b) If it appears that with up to 30 days additional treatment a person is likely to reconstitute sufficiently to obviate the need for appointment of a conservator, then the person may be certified for the additional 30 days.

(c) Where no conservatorship referral has been made during the 14-day period and where during the 30-day certification it appears that the person is likely to require the appointment of a conservator, then the conservatorship referral shall be made to allow sufficient time for conservatorship investigation and other related procedures. If a temporary conservatorship is obtained, it shall run concurrently with and not consecutively to the 30-day certification period. The conservatorship hearing shall be held by the 30th day of the certification period. The maximum involuntary detention period for gravely disabled persons pursuant to Sections 5150, 5250 and 5270.15 shall be limited to 47 days. Nothing in this section shall prevent a person from exercising his or her right to a hearing as stated in Sections 5275 and 5353.

SEC. 78. Section 49.5 of this bill incorporates amendments to Section 3000 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 3000

of the Penal Code, and (3) this bill is enacted after AB 1004, in which case Section 49 of this bill shall not become operative.

SEC. 79. Section 65.5 of this bill incorporates amendments to Section 19705 of the Revenue and Taxation Code proposed by both this bill and SB 1185. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, and (2) each bill amends Section 19705 of the Revenue and Taxation Code, in which case Section 65 of this bill shall not become operative.

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## CHAPTER 855

An act to add Division 6.7 (commencing with Section 15600) to the Vehicle Code, relating to vehicles.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

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

(a) Leaving young children unattended in motor vehicles has caused serious health and safety harm to children and is an unacceptable public health and safety hazard.

(b) The dangers of leaving young children unattended in motor vehicles include possible child access to ignition, brakes, clutch and gear shift lever, and other parts of the vehicle that could cause uncontrolled vehicular movement, exposure of the child to extreme cold or heat in those vehicles, and other dangers.

(c) Prior instances where young children have been left unattended in or around motor vehicles have resulted in serious injury or death, with no less than 60 fatalities in this state.

(d) It is well established that educational approaches, including promotional materials and television, radio, and print advertising, by themselves, do not improve safety behavior. Only when the educational approach is integrated with enforcement activities are they effective. The report of the January 2001 Seat Belt Summit, issued by the Automotive Coalition for Traffic Safety Inc., an organization composed of the major United States automobile manufacturers, supports this fact. That report found that the use of vehicle seat belts significantly increased when a law required their use, established a monetary penalty, and the public believed that the law was being enforced. The report concludes that advertising programs without an enforcement program should not be used. Other groups, including the Insurance Institute for Highway Safety

and the Harborview Injury Prevention and Research Center, have also concluded that information and educational campaigns without enforcement provisions are not effective.

(e) It is, therefore, the intent of the Legislature to improve vehicle safety for children by both educating the public about the danger of leaving a young child alone in a motor vehicle in circumstances that pose a life safety risk, and discouraging this dangerous conduct by imposing a monetary fine upon persons who engage in this conduct.

SEC. 2. Division 6.7 (commencing with Section 15600) is added to the Vehicle Code, to read:

## DIVISION 6.7. UNATTENDED CHILD IN MOTOR VEHICLE SAFETY ACT

### CHAPTER 1. GENERAL PROVISIONS

15600. This division shall be known and may be cited as ''Kaitlyn's Law.''

15602. This division applies to motor vehicles upon the highways and elsewhere throughout the state unless expressly provided otherwise.

15603. The purpose of this division is to help prevent injuries to, and the death of, young children from the effects of being left alone in a motor vehicle, to help educate parents and caretakers about the dangers of leaving children alone in a motor vehicle, and to authorize a monetary fine to be imposed on a person for leaving a young child alone in a motor vehicle in circumstances that pose a life safety risk.

### CHAPTER 2. OFFENSES

15620. (a) A parent, legal guardian, or other person responsible for a child who is 6 years of age or younger may not leave that child inside a motor vehicle without being subject to the supervision of a person who is 12 years of age or older, under either of the following circumstances:

(1) Where there are conditions that present a significant risk to the child's health or safety.

(2) When the vehicles's engine is running or the vehicle's keys are in the ignition, or both.

(b) A violation of subdivision (a) is an infraction punishable by a fine of one hundred dollars ($100), except that the court may reduce or waive the fine if the defendant establishes to the satisfaction of the court that he or she is economically disadvantaged and the court, instead, refers the defendant to a community education program that includes education on the dangers of leaving young children unattended in motor vehicles, and provides certification of completion of that program. Upon completion

of that program, the defendant shall provide that certification to the court. The court may, at its discretion, require any defendant described in this section to attend an education program on the dangers of leaving young children unattended in motor vehicles.

(c) Nothing in this section shall preclude prosecution under both this section and Section 192 of the Penal Code, or Section 273a of that code, or any other provision of law.

(d) (1) Subdivision (b) and Section 40000.1 do not apply if an unattended child is injured or medical services are rendered on that child because of a violation described in subdivision (a).

(2) Nothing in this subdivision precludes prosecution under any other provision of law.

### CHAPTER 3. EDUCATIONAL PROVISIONS

15630. Notwithstanding any other provision of law, the fines collected for a violation of this division shall be allocated by the county treasurer, as follows:

(a) (1) Seventy percent to the county or city health department where the violation occurred, to be used for the development and implementation of community education programs on the dangers of leaving young children unattended in motor vehicles.

(2) A county or city health department may develop and implement the community education program described in paragraph (1) or may contract for the development and implementation of that program.

(3) As the proceeds from fines collected under this division become available, each county or city health department shall prepare and annually update a listing of community education programs that provide information on the dangers of leaving young children unattended in motor vehicles and ways to avoid that danger. The county or city health department shall forward the listing to the courts and shall make the listing available to the public, and may distribute it to other agencies or organizations.

(b) Fifteen percent to the county or city for the administration of the program, from which will be paid the cost of the county to account for and disburse fine revenues.

(c) Fifteen percent to the city, to be deposited in its general fund except that, if the violation occurred in an unincorporated area, this amount shall be deposited in the county's general fund.

15632. (a) The department shall include information concerning the dangers of leaving children unattended in motor vehicles, including, but not limited to, the effect of solar heat on the temperature of vehicle interiors and the penalties for noncompliance with Chapter 2

(commencing with Section 15620), in the following materials distributed by the department:

(1) The California Driver's Handbook published under subdivision (b) of Section 1656.

(2) The driver's license examination administered under Section 12804.9, by including, on a rotating basis, at least one question in one version of the driver's license examination that is periodically administered to applicants.

(3) Any driver's education materials certified by the department.

(4) Courses and examinations for traffic violator schools.

(5) Materials provided to secondary and post-secondary schools and educational institutions.

(6) Any materials provided to community education campaigns undertaken by the department and other state agencies, including, but not limited to, the Department of the California Highway Patrol and the Department of Transportation.

(b) The department shall not republish materials before existing supplies are exhausted, but shall arrange for compliance with this section in the next edition or publication of those materials in the normal course of business.

SEC. 3. 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.

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## CHAPTER 856

An act to add Part 11 (commencing with Section 9100) to Division 5 of the Labor Code, relating to public safety.

[Approved by Governor October 12, 2001. Filed with
Secretary of State October 13, 2001.]

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

SECTION 1. Part 11 (commencing with Section 9100) is added to Division 5 of the Labor Code, to read:

## PART 11. COMMERCIAL ESTABLISHMENTS

### CHAPTER 1. WORKING WAREHOUSES

9100. For purposes of this chapter, ''sales floor'' means any area where the public is invited to shop, whether indoors or outdoors.

9101. For purposes of this chapter, ''working warehouse'' means a wholesale or retail establishment in which both of the following occur:

(a) Heavy machinery, including, but not limited to, forklifts, is used in any area where the public shops while customers are on the premises.

(b) Merchandise is stored on shelves higher than 12 feet above the sales floor.

9102. (a) The owner, manager, or operator of a working warehouse shall secure merchandise stored on shelves higher than 12 feet above the sales floor. Methods of securing merchandise shall include rails, fencing, netting, security doors, gates, cables, or the binding of items on a pallet into one unit by shrink-wrapping, metal or plastic banding, or by tying items together with a cord.

(b) All working warehouses shall comply with the provisions of this section by no later than July 1, 2002.

9103. (a) When heavy machinery is used to move merchandise from a shelf, there shall be a safety zone established to temporarily block customers from entering areas where merchandise could fall during removal from a shelf.

(b) All working warehouses shall comply with the provisions of this section by no later than July 1, 2002.

9104. An owner, manager, or operator of a working warehouse who employs more than 50 employees shall submit to the division, a report of all known injuries requiring hospitalization, including emergency room medical treatment, or deaths occurring to customers as the result of falling merchandise. The report shall be filed within 30 days of December 31, 2002, and within 30 days of December 31, 2003. Each year, a corporation owning, managing, or operating more than one working warehouse may submit a single report on behalf of all of the corporation's working warehouses in the state, provided that the report

identifies the location of the warehouse where each reportable incident occurred.

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## CHAPTER 857

An act to add and repeal Section 1680 of the Vehicle Code, relating to vehicles.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Driving under the influence of alcohol and drugs (DUI) continues to be a significant threat to public health and safety.

(b) Despite significant progress in reducing incidences of DUI, more than 190,000 arrests were made for DUI offenses in California in 1999, including more than 25 percent that were repeat offenders, highlighting the need to continue efforts to assess, treat, and make accountable those individuals and families who continue to suffer from alcohol and drug abuse.

(c) The Department of Motor Vehicles reported in the 2001 Annual Report of the California DUI Management Information System, alcohol treatment, in conjunction with license restriction, continued to be the most effective postconviction sanction in reducing subsequent DUI incidents among DUI offenders.

(d) The State Department of Alcohol and Drug Programs reported that the benefits of alcohol and other drug treatment outweigh the costs to taxpayers by ratios from 4 to 1 to greater than 12 to 1.

SEC. 2. Section 1680 is added to the Vehicle Code, to read:

1680. (a) The department shall review scientific and other empirical evidence on the effectiveness of programs, procedures, sanctions, fines, and fees in current law relating to the offense of driving under the influence of alcohol or drugs, or both. In undertaking the review, the department may also consult with representatives of law enforcement, district attorneys, public defenders, and licensed driving-under-the-influence programs, and any other appropriate persons or entities. The department shall report on or before July 1, 2002, to the Legislature as to any findings regarding sanction and program effectiveness, particularly with respect to repeat offenders, and submit any recommendations to improve individual accountability, public education, sanctions, and programs to reduce recidivism. The report may

also include recommendations for any statutory changes that would modify the responsibilities of agencies or the courts so that violators can be sanctioned and treated appropriately and effectively, based on demonstrated sanction and program effectiveness.

(b) 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.

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## CHAPTER 858

An act to add and repeal Section 1473.5 of the Penal Code, relating to battered women's syndrome.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 1473.5 is added to the Penal Code, to read:

1473.5. (a) A writ of habeas corpus also may be prosecuted on the basis that evidence relating to battered women's syndrome, within the meaning of Section 1107 of the Evidence Code, based on abuse committed on the perpetrator of a homicide by the victim of that homicide, was not introduced at the trial relating to the prisoner's incarceration, and is of such substance that, had it been introduced, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction, that the result of the proceedings would have been different. Sections 1260 to 1262, inclusive, apply to the prosecution of a writ of habeas corpus pursuant to this section.

(b) This section is limited to judgments of conviction for a violation of Section 187 resulting from a plea entered, or a trial commenced, before January 1, 1992.

(c) If a petitioner for habeas corpus under this section filed a petition for writ of habeas corpus prior to the effective date of this section, it is grounds for denial of the new petition if a court determined on the merits in the prior petition that the omission of evidence relating to battered woman's syndrome at trial was not prejudicial and did not entitle the petitioner to the writ of habeas corpus.

(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.

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CHAPTER 859

An act to add and repeal Section 19080.4 of the Government Code, and to amend and repeal Section 830.29 of the Penal Code, relating to the Dental Practice Act, and making an appropriation therefor.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

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

SECTION 1. Section 19080.4 is added to the Government Code, to read:

19080.4. Notwithstanding any other provision of law, the limited term appointment of each limited term peace officer at the Dental Board of California shall be extended to January 1, 2004.

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 830.29 of the Penal Code is amended to read:

830.29. (a) Pursuant to Section 830.3, the Director of Consumer Affairs may designate as peace officers an additional seven persons, who shall at the time of their designation be assigned to the investigations unit of the Dental Board of California.

(b) The authorization for these additional seven peace officer positions shall become inoperative on January 1, 2004.

(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 on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. (a) The Dental Board of California shall contract with the outside entity that completed the independent study required by Chapter 840 of the Statutes of 1999, to conduct a followup study for the purpose of further refining the findings and recommendations of the original study. The contract shall provide the independent entity at least three months to conduct the followup study and shall require that the followup study be completed and submitted to the Legislature by August 1, 2002. The followup study shall expand upon and further refine all of the following recommendations and findings resulting from the original study:

(1) Recommendations on the staffing requirements for the board's enforcement program, including the number and type of enforcement positions, such as sworn peace officer positions and nonpeace officer positions, that the board needs to fulfill its consumer protection mandate.

(2) Findings regarding the extent to which the board needs to use sworn peace officers in its enforcement program.

(3) Findings regarding the documentation of trends in dental related crimes reported to the board.

(4) Findings regarding the comparison of the board's enforcement program to similar agencies, including the mix of enforcement staff, caseloads, and case aging.

(5) Recommendations for improving the board's enforcement program.

(6) Findings regarding the fiscal impact to the board from the recommended changes, if any, to its enforcement program and staff.

(b) While conducting the followup study pursuant to this section, the outside entity shall consult with all interested parties, including, but not limited to, representatives of consumers, dental professionals, local law enforcement agencies, the Department of Consumer Affairs, and other state agencies that employ sworn peace officers and nonpeace officer investigators.

SEC. 4. The sum of seventy-five thousand dollars ($75,000) is hereby appropriated from the State Dentistry Fund to the Dental Board of California in order to conduct the followup study and to prepare the report required by this act.

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## CHAPTER 860

An act to add and repeal Article 3.5 (commencing with Section 6044) to Chapter 5 of Title 7 of Part 3 of the Penal Code, relating to mentally ill offenders, and making an appropriation therefor.

[Approved by Governor October 12, 2001. Filed with Secretary of State October 13, 2001.]

I am signing SB 1059, which would create the Council on Mentally Ill Offenders within the Youth and Adult Correctional Agency. This Council will investigate and promote cost effective approaches to meeting the long-term needs of adults and juveniles with mental disorders who are likely to become offenders or who have a history of offending. However, I am deleting Section 2, which appropriates one hundred thousand dollars ($100,000) from the General Fund.

Identifying cost-effective ways to efficiently expend resources to address the needs of this population would improve services and serve to lower costs for local law enforcement, local courts and the correctional system. 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. I am directing the affected state agencies to identify existing funds that can be used to support this program.

GRAY DAVIS, Governor

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

SECTION 1. Article 3.5 (commencing with Section 6044) is added to Chapter 5 of Title 7 of Part 3 of the Penal Code, to read:

Article 3.5. Council on Mentally Ill Offenders

6044. (a) The Council on Mentally Ill Offenders is hereby established within the Youth and Adult Correctional Agency. The council shall be composed of 11 members, one of whom shall be the Secretary of the Youth and Adult Correctional Agency who shall be designated as the chairperson, one of whom shall be the Director of Mental Health, and nine of whom shall be appointed. The Governor shall appoint three members, at least one of whom shall represent mental health. The Senate Rules Committee shall appoint two members, one representing law enforcement and one representing mental health. The Speaker of the Assembly shall appoint two members, one representing law enforcement and one representing mental health. The Attorney General shall appoint one member. The Chief Justice of the California Supreme Court shall appoint one member who shall be a superior court judge.

(b) The council shall select a vice chairperson from among its members. Six members of the council shall constitute a quorum.

(c) The Director of Mental Health shall serve as the liaison with the Health and Human Services Agency and any departments within that agency necessary to further the purposes of this article.

(d) Members of the council shall receive no compensation, but shall be reimbursed for actual and necessary travel expenses incurred in the performance of their duties. For purposes of compensation, attendance at meetings of the board shall be deemed performance by a member of the duties of his or her state or local government employment.

(e) The goal of the council shall be to investigate and promote cost-effective approaches to meeting the long-term needs of adults and juveniles with mental disorders who are likely to become offenders or who have a history of offending. The council shall:

(1) Identify strategies for preventing adults and juveniles with mental health needs from becoming offenders.

(2) Identify strategies for improving the cost-effectiveness of services for adults and juveniles with mental health needs who have a history of offending.

(3) Identify incentives to encourage state and local criminal justice, juvenile justice, and mental health programs to adopt cost-effective approaches for serving adults and juveniles with mental health needs who are likely to offend or who have a history of offending.

(f) The council shall consider strategies that:

(1) Improve service coordination among state and local mental health, criminal justice, and juvenile justice programs.

(2) Improve the ability of adult and juvenile offenders with mental health needs to transition successfully between corrections-based, juvenile justice-based, and community-based treatment programs.

(g) The Secretary of the Youth and Adult Correctional Agency and the Director of Mental Health may furnish for the use of the council those facilities, supplies, and personnel as may be available therefor. The council may secure the assistance of any state agency, department, or instrumentality in the course of its work.

(h) (1) The Council on Mentally Ill Offenders shall file with the Legislature, not later than December 31 of each year, a report that shall provide details of the council's activities during the preceding year. The report shall include recommendations for improving the cost-effectiveness of mental health and criminal justice programs.

(2) After the first year of operation, the council may recommend to the Legislature and Governor modifications to its jurisdiction, composition, and membership that will further the purposes of this article.

(i) The Council on Mentally Ill Offenders is authorized to apply for any funds that may be available from the federal government or other sources to further the purposes of this article.

(j) (1) For purposes of this article, the council shall address the needs of adults and juveniles who meet the following criteria: persons who have been arrested, detained, incarcerated, or are at a significant risk of being arrested, detained, or incarcerated, and who have a mental disorder as defined in Section 1830.205 of Title 9 of the California Code of Regulations.

(2) The council may expand its purview to allow it to identify strategies that are preventive in nature and could be directed to identifiable categories of adults and juveniles that fall outside of the above definitions.

(k) This article 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 sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the Youth and Adult Correctional Agency for funding the council for purposes of this act through June 30, 2002.

CHAPTER 861

An act to amend Section 25157.8 of the Health and Safety Code, relating to hazardous waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 25157.8 of the Health and Safety Code is amended to read:

25157.8. (a) Except as provided in subdivision (c), on and after January 1, 1999, no person shall dispose waste that contains total lead in excess of 350 parts per million, copper in excess of 2500 parts per million, or nickel in excess of 2000 parts per million to land at other than a class I hazardous waste disposal facility, unless the waste is disposed at the site of generation pursuant to express approval of the regional water quality control board granted prior to August 21, 1998, and the waste was classified as nonhazardous at that time, until both of the following occur:

(1) The appropriate California regional water quality control board has amended the solid waste facility's waste discharge requirements to specifically allow disposal of the waste.

(2) The appropriate local enforcement agency has revised the solid waste facility permit of the facility to specifically allow this disposal pursuant to Chapter 3 (commencing with Section 44001) of Part 4 of Division 30 of the Public Resources Code.

(b) Except as provided in subdivision (c), no person shall dispose any material to land at other than a class I hazardous waste disposal facility, if the material is regulated as a hazardous waste by the department, until all of the following have occurred:

(1) The department has issued a variance pursuant to Section 25143 to specifically allow disposal of the material to a disposal facility other than a class I hazardous waste disposal facility.

(2) The appropriate California regional water quality control board has amended the solid waste facility's waste discharge requirements to specifically allow disposal of the material.

(3) The appropriate local enforcement agency has revised the solid waste facility permit of the facility at which the material is proposed to be disposed to specifically allow this disposal pursuant to Chapter 3 (commencing with Section 44001) of Part 4 of Division 30 of the Public Resources Code.

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

(1) Wastes that are disposed of pursuant to a variance issued by the department prior to August 21, 1998.

(2) Wastes that are disposed of pursuant to a variance issued by the department and that the department classified and managed as a ''special waste'' pursuant to regulations adopted by the department that were in effect on August 21, 1998.

(3) Wastes disposed of pursuant to a variance issued to a state or local agency by the department pursuant to Section 25143 for the disposal of lead contaminated soil, if the disposal is only within the operating right-of-way of an existing highway, as defined in Section 23 of the Streets and Highways Code. This paragraph applies to lead-contaminated soil that is moved from one project to another only if the lead-contaminated soil remains within the designated, contiguously contaminated corridor and within the same transportation district for which the department has specifically issued the variance.

(d) This section does not exempt any state or local agency, or any other person, from any conditions or requirements of a California regional water quality control board, or any other agency, that may be placed on the reuse or disposal of waste pursuant to a variance issued by the department.

(e) This section shall remain in effect until July 1, 2006, and as of that date is repealed unless a later enacted statute repeals 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.

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

In order to extend the operation of a prohibition on the disposal on land of lead, copper, and nickel except in accordance with specified provisions and in order for various state and transportation agencies to take advantage of the benefits of this act for the construction of freeway projects that have already been planned, designed, and funded as soon as possible, it is necessary for this act to take effect immediately.

CHAPTER 862

An act to add Sections 349.5, 743.3, and 9614 to the Public Utilities Code, relating to public utilities.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 349.5 is added to the Public Utilities Code, to read:

349.5. (a) Beginning January 15, 2002, and at least once monthly thereafter, the Independent System Operator shall notify each air pollution control district and air quality management district of the name and address of each entity within the district's boundaries within the Independent System Operator's control area with whom the Independent System Operator enters into an interruptible service contract or similar arrangement.

(b) For the purposes of this section, ''interruptible service contract or similar arrangement'' means any arrangement in which a nonresidential entity agrees to reduce or consider reducing its electrical consumption during periods of peak demand or at the request of the Independent System Operator in exchange for compensation, or for assurances not to be blacked out or other similar nonmonetary assurances.

(c) The local air pollution control district or air quality management district shall maintain in a confidential manner the information received pursuant to this section. However, nothing in this subdivision shall affect the applicability of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, or of any other similar open records statute or ordinance, to information provided pursuant to this section.

SEC. 2. Section 743.3 is added to the Public Utilities Code, to read:

743.3. (a) Beginning January 15, 2002, and at least once monthly thereafter, an electrical corporation shall notify each air pollution control district and air quality management district of the name and address of each entity within the district's boundaries within the electrical corporation's control or service area with whom the electrical corporation enters into an interruptible service contract or similar arrangement.

(b) For the purposes of this section, ''interruptible service contract or similar arrangement'' means any arrangement in which a nonresidential electrical customer agrees to reduce or consider reducing its electrical consumption during periods of peak demand or at the request of the Independent System Operator in exchange for compensation, or for

assurances not to be blacked out or other similar nonmonetary assurances.

(c) The local air pollution control district or air quality management district shall maintain in a confidential manner the information received pursuant to this section. However, nothing in this subdivision shall affect the applicability of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, or of any other similar open records statute or ordinance, to information provided pursuant to this section.

SEC. 3. Section 9614 is added to the Public Utilities Code, to read:

9614. (a) Beginning January 15, 2002, and at least once monthly thereafter, a local publicly owned electric utility shall notify each air pollution control district and air quality management district of the name and address of each entity within the district's boundaries within the local publicly owned electric utility's control or service area with whom the utility enters into an interruptible service contract or similar arrangement.

(b) For the purposes of this section, ''interruptible service contract or similar arrangement'' means any arrangement in which a nonresidential electrical customer agrees to reduce or consider reducing its electrical consumption during periods of peak demand or at the request of the local publicly owned electric utility in exchange for compensation, or for assurances not to be blacked out or other similar nonmonetary assurances.

(c) The local air pollution control district or air quality management district shall maintain in a confidential manner the information received pursuant to this section. However, nothing in this subdivision shall affect the applicability of Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, or of any other similar open records statute or ordinance, to information provided pursuant to this section.

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.

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.

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## CHAPTER 863

An act to add Section 1348.3 to the Fish and Game Code, relating to wildlife conservation easements.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 1348.3 is added to the Fish and Game Code, to read:

1348.3. (a) No governmental entity may condemn any wildlife conservation easement acquired by a state agency, except as provided in subdivision (b). As used in this section, the following terms have the following meanings:

(1) ''Public use'' as used in Article 6 (commencing with Section 1240.510) and Article 7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure means privately owned lands managed for habitat in public trust.

(2) ''Wildlife'' has the same meaning as set forth in Section 711.2.

(3) ''Wildlife conservation easement'' means a recorded conservation easement, as defined in Section 815.1 of the Civil Code, that exists or will exist for at least 10 years and that is acquired and held by a state agency and administered primarily for the benefit of wildlife.

(b) Prior to the initiation by a governmental entity of condemnation proceedings against a wildlife conservation easement acquired by a state agency, the governmental entity shall give notice to the holder of the easement, provide an opportunity for the holder of the easement to consult with the governmental agency, provide the holder of the easement the opportunity to state its objections to the condemnation, and provide a response to the objections. Article 6 (commencing with Section 1240.510) and Article 7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure shall apply to condemnation proceedings initiated by a governmental entity against a wildlife conservation easement acquired by a state agency. In those proceedings, the condemning governmental entity shall be required to prove by clear and convincing evidence that its proposed use satisfies the requirements of Article 6 (commencing with Section 1240.510) or

Article 7 (commencing with Section 1240.610) of Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure.

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## CHAPTER 864

An act to add and repeal Section 101.10 of the Streets and Highways Code, relating to highways.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 101.10 is added to the Streets and Highways Code, to read:

101.10. (a) (1) The department shall design, construct, place, and maintain, or cause to be designed, constructed, placed, and maintained, along state highways, signs that read as follows: ''Please Don't Drink and Drive,'' followed by: ''In Memory of (victim's name).'' These signs shall be placed upon the state highways in accordance with this section, placement guidelines adopted by the department, and any applicable federal limitations or conditions on highway signage, including location and spacing. Signs may memorialize more than one victim. ''Victim'' for purposes of this section means a person who was killed in a vehicular accident, but does not include a party described in paragraph (2) of subdivision (c).

(2) The department shall adopt program guidelines for the application for and placement of signs authorized by this section, including, but not limited to, the sign application and qualification process, the procedure for the dedication of signs, and procedures for the replacement or restoration of any signs that are damaged or stolen.

(b) If the placement at the location of a vehicular accident is safe and practical and the conditions of subdivisions (c) and (d) are met, the department shall place a sign described in subdivision (a) in close proximity to the location where the vehicular accident occurred.

(c) (1) A party to that accident was convicted of any of the following:

(A) Murder of the second degree under Section 187, and the violation was a direct result of driving a vehicle while in violation of Section 23152 or 23153 of the Vehicle Code.

(B) Gross vehicular manslaughter while intoxicated under subdivision (a) of Section 191.5 of the Penal Code.

(C) Vehicular manslaughter under paragraph (3) of subdivision (c) of Section 192.

(2) A party to that accident operated a vehicle involved in the vehicular accident in violation of Section 23152 or 23153 of the Vehicle Code, but died in the accident or was not prosecuted because he or she is found mentally incompetent pursuant to Section 1367 of the Penal Code.

(d) (1) Upon the request of an immediate family member of the deceased victim involved in an accident occurring on and after January 1, 1991, and described in subdivision (b), the department shall place a sign in accordance with this section. A person who is not a member of the immediate family may also submit a request to have a sign placed under this section if that person also submits the written consent of an immediate family member. The department shall charge the requesting party a fee to cover the department's cost in designing, constructing, placing, and maintaining that sign, and the department's costs in administering this section. The sign shall be posted for seven years from the date of initial placement, or until the date the department determines that the condition of the sign has deteriorated to the point that it is no longer serviceable, whichever date is first.

(2) ''Immediate family'' means spouse, child, stepchild, brother, stepbrother, sister, stepsister, mother, stepmother, father, or stepfather.

(3) If there is any opposition to the placement of the memorial sign by a member of the immediate family, no sign shall be placed pursuant to this section.

(e) The department shall prepare an evaluation of the program authorized by this section and shall report its findings and any related recommendations to the Legislature by January 1, 2006.

(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.

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## CHAPTER 865

An act to amend Sections 17210.1 and 17213.1 of the Education Code, relating to school facilities, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 17210.1 of the Education Code is amended to read:

17210.1. (a) Notwithstanding any other provision of law:

(1) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, the state act applies to schoolsites where naturally occurring hazardous materials are present, regardless of whether there has been a release or there is a threatened release of a hazardous material.

(2) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10, all references in the state act to hazardous substances shall be deemed to include hazardous materials and all references in the state act to public health shall be deemed to include children's health.

(3) All risk assessments conducted by school districts that elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) of Part 10 at sites addressed by this article shall include a focus on the risks to children's health posed by a hazardous materials release or threatened release, or the presence of naturally occurring hazardous materials, on the schoolsite.

(4) The response actions selected under this article shall, at a minimum, be protective of children's health, with an ample margin of safety.

(b) In implementing this article, a school district shall provide a notice to residents in the immediate area prior to the commencement of work on a preliminary endangerment assessment utilizing a format developed by the Department of Toxic Substances Control.

(c) Nothing in this article shall be construed to limit the authority of the Department of Toxic Substances Control or the State Department of Education to take any action otherwise authorized under any other provision of law.

(d) Unless the Legislature otherwise funds its costs for overseeing actions taken pursuant to this article, the Department of Toxic Substances Control shall comply with Chapter 6.66 (commencing with Section 25269) of Division 20 of the Health and Safety Code when recovering its costs incurred in carrying out its duties pursuant to this article.

(e) Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code does not apply to schoolsites at which all necessary response actions have been completed.

SEC. 2. Section 17213.1 of the Education Code is amended to read:

17213.1. As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10), the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the

acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite, the governing board shall contract with an environmental assessor to supervise the preparation of, and sign, a Phase I environmental assessment of the proposed schoolsite unless the governing board decides to proceed directly to a preliminary endangerment assessment, in which case it shall comply with paragraph (4).

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the assessment, together with all documentation related to the proposed acquisition or use of the proposed schoolsite, shall be submitted to the State Department of Education. A school district may submit a Phase I environmental assessment to the State Department of Education and proof that the environmental assessor meets the qualifications specified in subdivision (b) of Section 17210 prior to its submission of other documentation related to the proposed schoolsite acquisition or use. Within 10 calendar days after the State Department of Education receives the Phase I environmental assessment, the proof of the environmental assessor's qualifications, and the fee to be forwarded to the Department of Toxic Substances Control for its review of the Phase I environmental assessment, the State Department of Education shall transmit that assessment and that proof of the environmental assessor's qualifications to the Department of Toxic Substances Control for its review and approval, which shall be conducted by the Department of Toxic Substances Control within 30 calendar days of its receipt of that assessment and that proof of qualifications. In those instances in which the Department of Toxic Substances Control requests additional information after receipt of the Phase I environmental assessment pursuant to paragraph (3), the Department of Toxic Substances Control shall conduct its review and approval within 30 days of its receipt of the requested additional information. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment

and shall notify the State Department of Education and the governing board of the school district of the approval.

(3) If the Department of Toxic Substances Control determines that the Phase I environmental assessment is not complete or disapproves the Phase I environmental assessment, the department shall inform the school district of the decision, the basis for the decision, and actions necessary to secure department approval of the Phase I environmental assessment. The school district shall take actions necessary to secure the approval of the Phase I environmental assessment, elect to conduct a preliminary endangerment assessment, or elect not to pursue the acquisition or the construction project. To facilitate completion of the Phase I environmental assessment, the information required by this paragraph may be provided by telephonic or electronic means.

(4) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes after it reviews a Phase I environmental assessment pursuant to this section that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to supervise the preparation of, and sign, a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The agreement entered into with the Department of Toxic Substances Control may be entitled an ''Environmental Oversight Agreement'' and shall reference this paragraph. A school district may, with the concurrence of the Department of Toxic Substances Control, enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of a preliminary endangerment assessment without first having prepared a Phase I environmental assessment. Upon request from the school district, the Director of the Department of Toxic Substances Control shall exercise its authority to designate a person to enter the site and inspect and obtain samples pursuant to Section 25358.1 of the Health and Safety Code, if the director determines that the exercise of that authority will assist in expeditiously completing the preliminary endangerment assessment. The preliminary endangerment assessment shall contain one of the following conclusions:

(A) A further investigation of the site is not required.

(B) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(5) The school district shall submit the preliminary endangerment assessment to the Department of Toxic Substances Control for its review and approval and to the State Department of Education for its files. The school district may entitle a document that is meant to fulfill the requirements of a preliminary endangerment assessment a ''preliminary environmental assessment'' and that document shall be deemed to be a preliminary endangerment assessment if it specifically refers to the statutory provisions whose requirements it intends to meet and the document meets the requirements of a preliminary endangerment assessment.

(6) At the same time a school district submits a preliminary endangerment assessment to the Department of Toxic Substances Control pursuant to paragraph (5), the school district shall publish a notice that the assessment has been submitted to the department in a local newspaper of general circulation, and shall post the notice in a prominent manner at the proposed schoolsite that is the subject of that notice. The notice shall state the school district's determination to make the preliminary endangerment assessment available for public review and comment pursuant to subparagraph (A) or (B):

(A) If the school district chooses to make the assessment available for public review and comment pursuant to this subparagraph, it shall offer to receive written comments for a period of at least 30 calendar days after the assessment is submitted to the Department of Toxic Substances Control, commencing on the date the notice is originally published, and shall hold a public hearing to receive further comments. The school district shall make all of the following documents available to the public upon request through the time of the public hearing:

(i) The preliminary endangerment assessment.

(ii) The changes requested by the Department of Toxic Substances Control for the preliminary endangerment assessment, if any.

(iii) Any correspondence between the school district and the Department of Toxic Substances Control that relates to the preliminary endangerment assessment.

For the purposes of this subparagraph, the notice of the public hearing shall include the date and location of the public hearing, and the location where the public may review the documents described in clauses (i) to (iii), inclusive. If the preliminary endangerment assessment is revised or altered following the public hearing, the school district shall make those revisions or alterations available to the public. The school district shall transmit a copy of all public comments received by the school district on the preliminary endangerment assessment to the Department of Toxic Substances Control. The Department of Toxic Substances Control shall complete its review of the preliminary endangerment assessment and public comments received thereon and shall either approve or

disapprove the assessment within 30 calendar days of the close of the public review period. If the Department of Toxic Substances Control determines that it is likely to disapprove the assessment prior to its receipt of the public comments, it shall inform the school district of that determination and of any action that the school district is required to take for the Department of Toxic Substances Control to approve the assessment.

(B) If the school district chooses to make the preliminary endangerment assessment available for public review and comment pursuant to this subparagraph, the Department of Toxic Substances Control shall complete its review of the assessment within 60 calendar days of receipt of the assessment and shall either return the assessment to the school district with comments and requested modifications or requested further assessment or concur with the adequacy of the assessment pending review of public comment. If the Department of Toxic Substances Control concurs with the adequacy of the assessment, and the school district proposes to proceed with site acquisition or a construction project, the school district shall make the assessment available to the public on the same basis and at the same time it makes available the draft environmental impact report or negative declaration pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) for the site, unless the document developed pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) will not be made available until more than 90 days after the assessment is approved, in which case the school district shall, within 60 days of the approval of the assessment, separately publish a notice of the availability of the assessment for public review in a local newspaper of general circulation. The school district shall hold a public hearing on the preliminary endangerment assessment and the draft environmental impact report or negative declaration at the same time, pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). All public comments pertaining to the preliminary endangerment assessment shall be forwarded to the Department of Toxic Substances Control immediately. The Department of Toxic Substances Control shall review the public comments forwarded by the school district and shall approve or disapprove the preliminary endangerment assessment within 30 days of the district's approval action of the environmental impact report or the negative declaration.

(7) The school district shall comply with the public participation requirements of Sections 25358.7 and 25358.7.1 of the Health and Safety Code and other applicable provisions of the state act with respect to those response actions only if further response actions beyond a

preliminary endangerment assessment are required and the district determines that it will proceed with the acquisition or construction project.

(8) If the Department of Toxic Substances Control disapproves the preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(9) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(10) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(11) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a Phase I environmental assessment, a preliminary endangerment assessment, or information concerning either of these assessments, any of which is required by this section, may not be held liable in any action filed against the school district for making either of these assessments available for public review.

(d) The changes made to this section by the act amending this section during the 2001 portion of the 2001–02 Regular Session do not apply to a schoolsite acquisition project or a school construction project, if either of the following occurred on or before the effective date of the act amending this section during the 2001 portion of the 2001–02 Regular Session:

(1) The final preliminary endangerment assessment for the project was approved by the Department of Toxic Substances Control pursuant to this section as this section read on the date of the approval.

(2) The school district seeking state funding for the project completed a public hearing for the project pursuant to this section, as this section read on the date of the hearing.

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.

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

In order to expeditiously construct new classrooms and school facilities for pupils, while ensuring that these new facilities are subject to an environmental assessment to determine if these facilities could be affected by any potential hazardous materials releases, thereby protecting the health and safety of those pupils and the environment, it is necessary that this act take effect immediately.

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## CHAPTER 866

An act to amend Sections 25143.2, 25144, and 25198 of the Health and Safety Code, relating to hazardous waste.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 25143.2 of the Health and Safety Code is amended to read:

25143.2. (a) Recyclable materials are subject to this chapter and the regulations adopted by the department to implement this chapter that apply to hazardous wastes, unless the department issues a variance pursuant to Section 25143, or except as provided otherwise in subdivision (b), (c), or (d) or in the regulations adopted by the department pursuant to Sections 25150 and 25151.

(b) Except as otherwise provided in subdivisions (e), (f), and (g), recyclable material that is managed in accordance with Section 25143.9 and is or will be recycled by any of the following methods shall be excluded from classification as a waste:

(1) Used or reused as an ingredient in an industrial process to make a product if the material is not being reclaimed.

(2) Used or reused as a safe and effective substitute for commercial products if the material is not being reclaimed.

(3) Returned to the original process from which the material was generated, without first being reclaimed, if the material is returned as a substitute for raw material feedstock, and the process uses raw materials as principal feedstocks.

(c) Except as otherwise provided in subdivision (e), any recyclable material may be recycled at a facility that is not authorized by the department pursuant to the applicable hazardous waste facilities permit requirements of Article 9 (commencing with Section 25200) if either of the following requirements is met:

(1) The material is a petroleum refinery waste containing oil that is converted into petroleum coke at the same facility at which the waste was generated unless the resulting coke product would be identified as a hazardous waste under this chapter.

(2) The material meets all of the following conditions:

(A) The material is recycled and used at the same facility at which the material was generated.

(B) The material is recycled within the applicable generator accumulation time limits specified in Section 25123.3 and the regulations adopted by the department pursuant to paragraph (1) of subdivision (b) of Section 25123.3.

(C) The material is managed in accordance with all applicable requirements for generators of hazardous wastes under this chapter and regulations adopted by the department.

(d) Except as otherwise provided in subdivisions (e), (f), (g), and (h), recyclable material that meets the definition of a non-RCRA hazardous waste in Section 25117.9, is managed in accordance with Section

25143.9, and meets or will meet any of the following requirements is excluded from classification as a waste:

(1) The material can be shown to be recycled and used at the site where the material was generated.

(2) The material qualifies as one or more of the following:

(A) The material is a product that has been processed from a hazardous waste, or has been handled, at a facility authorized by the department pursuant to the facility permit requirements of Article 9 (commencing with Section 25200) to process or handle the material, if the product meets both of the following conditions:

(i) The product does not contain constituents, other than those for which the material is being recycled, that render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141.

(ii) The product is used, or distributed or sold for use, in a manner for which the product is commonly used.

(B) The material is a petroleum refinery waste containing oil that is converted into petroleum coke at the same facility at which the waste was generated, unless the resulting coke product would be identified as a hazardous waste under this chapter.

(C) The material is oily waste, used oil, or spent nonhalogenated solvent that is managed by the owner or operator of a refinery that is processing primarily crude oil and is not subject to permit requirements for the recycling of used oil, of a public utility, or of a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent of the refinery or public utility, and meets all of the following requirements:

(i) The material is either burned in an industrial boiler, an industrial furnace, an incinerator, or a utility boiler that is in compliance with all applicable federal and state laws, or is recombined with normal process streams to produce a fuel or other refined petroleum product.

(ii) The material is managed at the site where it was generated; managed at another site owned or operated by the generator, a corporate subsidiary of the generator, a subsidiary of the same entity of which the generator is a subsidiary, or the corporate parent of the generator; or, if the material is generated in the course of oil or gas exploration or production, managed by an unrelated refinery receiving the waste through a common pipeline.

(iii) The material does not contain constituents, other than those for which the material is being recycled, that render the material hazardous under regulations adopted pursuant to Sections 25140 and 25141, unless the material is an oil-bearing material or recovered oil that is managed in accordance with subdivisions (a) and (c) of Section 25144 or unless the material is used oil removed from equipment, vehicles, or engines used primarily at the refinery where it is to be used to produce fuels or

other refined petroleum products and the used oil is managed in accordance with Section 279.22 of Title 40 of the Code of Federal Regulations prior to insertion into the refining process.

(D) The material is a fuel that is transferred to, and processed into, a fuel or other refined petroleum product at a petroleum refinery, as defined in paragraph (4) of subdivision (a) of Section 25144, and meets one of the following requirements:

(i) The fuel has been removed from a fuel tank and is contaminated with water or nonhazardous debris, of not more than 2 percent by weight, including, but not limited to, rust or sand.

(ii) The fuel has been unintentionally mixed with an unused petroleum product.

(3) The material is transported between locations operated by the same person who generated the material, if the material is recycled at the last location operated by that person and all of the conditions of clauses (i) to (vi), inclusive, of subparagraph (A) of paragraph (4) are met. If requested by the department or by any official authorized to enforce this section pursuant to subdivision (a) of Section 25180, a person handling material subject to this paragraph, within 15 days from the date of receipt of the request, shall supply documentation to show that the requirements of this paragraph have been satisfied.

(4) (A) The material is transferred between locations operated by the same person who generated the material, if the material is to be recycled at an authorized offsite hazardous waste facility and if all of the following conditions are met:

(i) The material is transferred by employees of that person in vehicles under the control of that person or by a registered hazardous waste hauler under contract to that person.

(ii) The material is not handled at any interim location.

(iii) The material is not held at any publicly accessible interim location for more than four hours unless required by other provisions of law.

(iv) The material is managed in compliance with this chapter and the regulations adopted pursuant to this chapter prior to the initial transportation of the material and after the receipt of the material at the last location operated by that person. Upon receipt of the material at the last location operated by that person, the material shall be deemed to have been generated at that location.

(v) All of the following information is maintained in an operating log at the last location operated by that person and kept for at least three years after receipt of the material at that location:

(I) The name and address of each generator location contributing material to each shipment received.

(II) The quantity and type of material contributed by each generator to each shipment of material.

(III) The destination and intended disposition of all material shipped offsite or received.

(IV) The date of each shipment received or sent offsite.

(vi) If requested by the department, or by any law enforcement official, a person handling material subject to this paragraph, within 15 days from the date of receipt of the request, shall supply documentation to show that the requirements of this paragraph have been satisfied.

(B) For purposes of paragraph (3) and subparagraph (A) of this paragraph, ''person'' also includes corporate subsidiary, corporate parent, or subsidiary of the same corporate parent.

(C) Persons that are a corporate subsidiary, corporate parent, or subsidiary of the same corporate parent, and that manage recyclable materials under paragraph (3) or subparagraph (A) of this paragraph, are jointly and severally liable for any activities excluded from regulation pursuant to this section.

(5) The material is used or reused as an ingredient in an industrial process to make a product if the material meets all of the following requirements:

(A) The material is not a wastewater that meets all of the following criteria:

(i) The wastewater is a non-RCRA hazardous waste.

(ii) The wastewater contains more than 75 parts per million of total petroleum hydrocarbons, as determined by use of United States Environmental Protection Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable Material.

(iii) The wastewater has been transported offsite to a facility, that is not a publicly owned treatment works, a facility owned by the generator, or a corporate subsidiary, corporate parent, or a subsidiary of the same corporate parent of the generator.

(B) Any discharges to air from the treatment of the material by the procedures specified in subparagraph (C) do not contain constituents that are hazardous wastes pursuant to the regulations of the department and are in compliance with applicable air pollution control laws.

(C) The material is not being treated except by one or more of the following procedures:

(i) Filtering.

(ii) Screening.

(iii) Sorting.

(iv) Sieving.

(v) Grinding.

(vi) Physical or gravity separation without the addition of external heat or any chemicals.

(vii) pH adjustment.

(viii) Viscosity adjustment.

(6) The material is used or reused as a safe and effective substitute for commercial products, if the material meets all of the following requirements:

(A) The material is not a wastewater that meets all of the following criteria:

(i) The wastewater is a non-RCRA hazardous waste.

(ii) The wastewater contains more than 75 parts per million of total petroleum hydrocarbons, as determined by use of United States Environmental Protection Agency Method 1664, Revision A for Silica Gel Treated N-Hexane Extractable Material.

(iii) The wastewater has been transported offsite to a facility that is not a publicly owned treatment works, or a facility owned by the generator, or a corporate subsidiary, corporate parent, or a subsidiary of the same corporate parent of the generator.

(B) Any discharges to air from the treatment of the material by the procedures specified in subparagraph (C) do not contain constituents that are hazardous wastes pursuant to the regulations of the department and the discharges are in compliance with applicable air pollution control laws.

(C) The material is not being treated, except by one or more of the following procedures:

(i) Filtering.

(ii) Screening.

(iii) Sorting.

(iv) Sieving.

(v) Grinding.

(vi) Physical or gravity separation without the addition of external heat or any chemicals.

(vii) pH adjustment.

(viii) Viscosity adjustment.

(7) The material is a chlorofluorocarbon or hydrochlorofluorocarbon compound or a combination of chlorofluorocarbon or hydrochlorofluorocarbon compounds, is being reused or recycled, and is used in heat transfer equipment, including, but not limited to, mobile air-conditioning systems, mobile refrigeration, and commercial and industrial air-conditioning and refrigeration systems, used in fire extinguishing products, or contained within foam products.

(e) Notwithstanding subdivisions (b), (c), and (d), all of the following recyclable materials are hazardous wastes and subject to full regulation under this chapter, even if the recycling involves use, reuse, or return to the original process as described in subdivision (b), and even if the

recycling involves activities or materials described in subdivisions (c) and (d):

(1) Materials that are a RCRA hazardous waste, as defined in Section 25120.2, used in a manner constituting disposal, or used to produce products that are applied to the land, including, but not limited to, materials used to produce a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance.

(2) Materials that are a non-RCRA hazardous waste, as defined in Section 25117.9, and used in a manner constituting disposal or used to produce products that are applied to the land as a fertilizer, soil amendment, agricultural mineral, or an auxiliary soil and plant substance. The department may adopt regulations to exclude materials from regulation pursuant to this paragraph.

(3) Materials burned for energy recovery, used to produce a fuel, or contained in fuels, except materials exempted under paragraph (1) of subdivision (c) or excluded under subparagraph (B), (C), or (D) of paragraph (2) of subdivision (d).

(4) Materials accumulated speculatively.

(5) Materials determined to be inherently wastelike pursuant to regulations adopted by the department.

(6) Used or spent etchants, stripping solutions, and plating solutions that are transported to an offsite facility operated by a person other than the generator and either of the following applies:

(A) The etchants or solutions are no longer fit for their originally purchased or manufactured purpose.

(B) If the etchants or solutions are reused, the generator and the user cannot document that they are used for their originally purchased or manufactured purpose without prior treatment.

(7) Used oil, as defined in subdivision (a) of Section 25250.1, unless one of the following applies:

(A) The used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d), paragraph (4) of subdivision (d), subdivision (b) of Section 25250.1, or Section 25250.3, and is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

(B) The used oil is used or reused on the site where it was generated or is excluded under paragraph (3) of subdivision (d), is managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations, and is not any of the following:

(i) Used in a manner constituting disposal or used to produce a product that is applied to land.

(ii) Burned for energy recovery or used to produce a fuel unless the used oil is excluded under subparagraph (B) or (C) of paragraph (2) of subdivision (d).

(iii) Accumulated speculatively.

(iv) Determined to be inherently wastelike pursuant to regulations adopted by the department.

(f) (1) Any person who manages a recyclable material under a claim that the material qualifies for exclusion or exemption pursuant to this section shall provide, upon request, to the department, the California Environmental Protection Agency, or any local agency or official authorized to bring an action as provided in Section 25180, all of the following information:

(A) The name, street and mailing address, and telephone number of the owner or operator of any facility that manages the material.

(B) Any other information related to the management by that person of the material requested by the department, the California Environmental Protection Agency, or the authorized local agency or official.

(2) Any person claiming an exclusion or an exemption pursuant to this section shall maintain adequate records to demonstrate to the satisfaction of the requesting agency or official that there is a known market or disposition for the material, and that the requirements of any exemption or exclusion pursuant to this section are met.

(3) For purposes of determining that the conditions for exclusion from classification as a waste pursuant to this section are met, any person, facility, site, or vehicle engaged in the management of a material under a claim that the material is excluded from classification as a waste pursuant to this section is subject to Section 25185.

(g) For purposes of Chapter 6.8 (commencing with Section 25300), recyclable materials excluded from classification as a waste pursuant to this section are not excluded from the definition of hazardous substances in subdivision (g) of Section 25316.

(h) Used oil that fails to qualify for exclusion pursuant to subdivision (d) solely because the used oil is a RCRA hazardous waste may be managed pursuant to subdivision (d) if the used oil is also managed in accordance with the applicable requirements of Part 279 (commencing with Section 279.1) of Title 40 of the Code of Federal Regulations.

SEC. 2. Section 25144 of the Health and Safety Code is amended to read:

25144. (a) For purposes of this section, the following terms have the following meaning:

(1) ''Oil'' means crude oil, or any fraction thereof, that is liquid at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute pressure. ''Oil'' does not include any of the following, unless it is exempt from

regulation under paragraph (1) of subdivision (g) of Section 279.10 of, or paragraph (5) of subdivision (g) of Section 279.10 of, Part 279 of Title 40 of the Code of Federal Regulations:

(A) Spent lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, heavy equipment, or machinery powered by an internal combustion engine.

(B) Spent industrial oils, including compressor, turbine, and bearing oil, hydraulic oil, metal-working oil, refrigeration oil, and railroad drainings.

(2) ''Oil-bearing materials'' means any liquid or semisolid material containing oil, partially refined petroleum products, or petroleum products. ''Oil-bearing materials'' do not include either of the following:

(A) Soil from remediation projects.

(B) Contaminated groundwater that is generated at, or originating from the operation, maintenance, or cleanup of, service stations, as defined in Section 13650 of the Business and Professions Code.

(3) ''Oil recovery operations'' means the physical separation of oil from oil-bearing materials by means of gravity separation, centrifugation, filter pressing, or other dewatering processes, with or without the addition of heat, chemical flocculants, air, or natural gas to enhance separation.

(4) ''Petroleum refinery'' means an establishment that has the Standard Industrial Classification Code 2911 and that is not subject to the permit requirements for the recycling of used oil imposed pursuant to Article 9 (commencing with Section 25200).

(5) ''Subsidiary'' means a corporate entity engaged in the exploration, production, transportation, refining, marketing, or distribution of crude oil or petroleum products.

(b) (1) Except as provided in paragraph (2), a biological process on the property of the producer treating oil, its products, and water, that meets the definition of a non-RCRA waste, and that produces an effluent that is continuously discharged to navigable waters in compliance with a permit issued pursuant to Section 402 of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1342), is exempt from this chapter.

(2) Residues produced in the treatment process and subsequently removed that conform to any criterion for the identification of a hazardous waste adopted pursuant to Section 25141 are not exempt from this chapter.

(c) To the extent consistent with the applicable provisions of the federal act, units, including associated piping, that are part of a system used for the recovery of oil from oil-bearing materials, and the associated storage of oil-bearing materials and the recovered oil, are exempt from this chapter, if all of the following conditions are met:

(1) The oil recovery operations are conducted at a petroleum refinery, or at another facility owned or operated by the corporate entity that owns or operates the refinery, or a corporate parent or subsidiary of the corporate entity.

(2) The oil-bearing materials are generated at the refinery or at another facility owned or operated by the corporate entity that owns or operates the refinery, or a corporate parent or subsidiary, including a sister subsidiary, of the corporate entity, or are generated in the course of oil or gas exploration or production operations conducted by an unrelated entity and placed in a common pipeline.

(3) The recovered oil is inserted into petroleum refinery process units to produce fuel or other refined petroleum products. This paragraph does not allow the direct blending, into final petroleum products, of oil-bearing materials or recovered oil that contain constituents that render these materials hazardous under the regulations adopted pursuant to Sections 25140 and 25141, other than those for which the material is being recycled.

(4) The recovered oil is not stored in a surface impoundment or accumulated speculatively at the refinery or at an offsite facility.

(5) Any residual materials removed from a unit that is exempt under this subdivision are managed in accordance with all other applicable laws.

(6) The oil-bearing materials would be excluded from classification as a waste pursuant to, or would otherwise meet the requirements for an exemption under, Section 25143.2, except that the following provisions do not apply to those oil-bearing materials:

(A) The prohibitions against prior reclamation in paragraphs (1), (2), and (3) of subdivision (b) of Section 25143.2.

(B) Subparagraph (C) of paragraph (2) of subdivision (c) of Section 25143.2.

(C) Paragraph (3) of subdivision (e) of Section 25143.2.

(D) Sections 25143.9 and 25143.10.

(E) The exceptions for wastewater containing more than 75 parts per million of total petroleum hydrocarbons, as provided by subparagraph (A) of paragraph (5) of, and subparagraph (A) of paragraph (6) of, subdivision (d) of Section 25143.2.

SEC. 3. Section 25198 of the Health and Safety Code is amended to read:

25198. (a) For purposes of this section, ''state department'' means the State Department of Health Services.

(b) Except as provided in subdivision (c), the analysis of any material required by this chapter shall be performed by a laboratory certified by the state department pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101, except that laboratories

previously issued a certificate under this section shall be deemed certified until the time that certification under Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 has been either granted or denied, but not beyond the expiration date shown on the certificate previously issued under this section.

(c) The requirements of subdivision (b) shall not apply to analyses performed by a laboratory pursuant to the facility's waste analysis plan, that is prepared in accordance with the regulations adopted by the Department of Toxic Substances Control pursuant to this chapter, if both of the following conditions are met:

(1) The laboratory is owned or operated by the same person who owns or operates the facility at which the waste will be managed, and the facility is a hazardous waste treatment, storage, or disposal facility that is required to obtain a hazardous waste facilities permit pursuant to Article 9 (commencing with Section 25200).

(2) The analysis is conducted for any of the following purposes:

(A) To determine whether a facility will accept the hazardous waste for transfer, storage, or treatment, as described in paragraph (3) of subdivision (a) of Section 66264.13 of, and paragraph (3) of subdivision (a) of Section 66265.13 of, Title 22 of the California Code of Regulations, as those sections read on January 1, 2001.

(B) To ensure that the analysis used to determine whether a facility will accept the hazardous waste for transfer, storage, or treatment is accurate and up to date, as described in paragraph (4) of subdivision (a) of Section 66264.13 of, and paragraph (4) of subdivision (a) of Section 66265.13 of, Title 22 of the California Code of Regulations, as those sections read on January 1, 2001.

(C) To determine whether the hazardous waste received at the facility for transfer, storage, or treatment matches the identity of the hazardous waste designated on an accompanying manifest or shipping paper, as described in paragraph (5) of subdivision (a) of Section 66264.13 of, and paragraph (5) of subdivision (a) of Section 66265.13 of, the California Code of Regulations, as those sections read on January 1, 2001.

(d) An analysis performed in accordance with subdivision (c) is not an analysis performed for regulatory purposes within the meaning of paragraph (19) of subdivision (c) of Section 100825.

(e) The exemption provided by subdivision (c) does not exempt the analyses of waste for purposes of disposal from the requirements of subdivision (b) requiring certified laboratory analyses. The analyses described in subdivision (c) are not exempt from any other requirement of law, regulation, or guideline governing quality assurance and quality control.

(f) No person or public entity of the state shall contract with a laboratory for environmental analyses for which certification is required pursuant to this chapter, unless the laboratory holds a valid certificate.

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.

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## CHAPTER 867

An act to amend Sections 21081.7, 21083.9, and 21092.2 of the Public Resources Code, relating to environmental quality.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 21081.7 of the Public Resources Code is amended to read:

21081.7. Transportation information resulting from the reporting or monitoring program required to be adopted by a public agency pursuant to Section 21081.6 shall be submitted to the transportation planning agency in the region where the project is located and to the Department of Transportation for a project of statewide, regional, or areawide significance according to criteria developed pursuant to Section 21083. The transportation planning agency and the Department of Transportation shall adopt guidelines for the submittal of those reporting or monitoring programs.

SEC. 2. Section 21083.9 of the Public Resources Code is amended to read:

21083.9. (a) Notwithstanding Section 21080.4, 21104, or 21153, a lead agency shall call at least one scoping meeting for any of the following:

(1) A proposed project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department. The lead agency shall call the scoping meeting as soon as possible, but not later than 30 days after receiving the request from the Department of Transportation.

(2) A project of statewide, regional, or areawide significance.

(b) The lead agency shall provide notice of at least one scoping meeting held pursuant to paragraph (2) of subdivision (a) to all of the following:

(1) Any county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and the county or city.

(2) Any responsible agency.

(3) Any public agency that has jurisdiction by law with respect to the project.

(4) Any organization or individual who has filed a written request for the notice.

(c) For any entity, organization, or individual that is required to be provided notice of a lead agency public meeting, the requirement for notice of a scoping meeting pursuant to subdivision (b) may be met by including the notice of a scoping meeting in the public meeting notice.

SEC. 3. Section 21092.2 of the Public Resources Code is amended to read:

21092.2. The notices required pursuant to Sections 21080.4, 21083.9, 21092, 21108, and 21152 shall be mailed to any person who has filed a written request for notices with either the clerk of the governing body or, if there is no governing body, the director of the agency. The request may also be filed with any other person designated by the governing body or director to receive these requests. The agency may require requests for notices to be annually renewed. The public agency may charge a fee, except to other public agencies, that is reasonably related to the costs of providing this service. This section may not be construed in any manner that results in the invalidation of an action because of the failure of a person to receive a requested notice, provided that there has been substantial compliance with the requirements of this section.

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.

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## CHAPTER 868

An act to add Section 4601.5 to the Vehicle Code, relating to vehicles.

[Approved by Governor October 13, 2001. Filed with
Secretary of State October 14, 2001.]

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

SECTION 1. Section 4601.5 is added to the Vehicle Code, to read:

4601.5. Notwithstanding Section 4601, the registration for vehicles registered pursuant to the International Registration Plan as described in Article 4 (commencing with Section 8050) of Chapter 4 of Division 3 and for vehicles registered under the Partial Year Registration Program as described in Article 5 (commencing with Section 9700) of Chapter 6 of Division 3, expires at midnight of December 31 of the registration year. However, for the purposes of applying any future reductions or increases in the vehicle license fee, the vehicle registrations subject to this section shall be deemed to have a final expiration date in the succeeding calendar year.

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## CHAPTER 869

An act to amend Sections 13261, 13262, 13267, 13323, 13327, 13350, 13351, 13385, 13387, 13443, and 13627.1 of, to amend and renumber Sections 13627.2 and 13627.3 of, and to add Section 13627.2 to, the Water Code, relating to water.

[Approved by Governor October 13, 2001. Filed with
Secretary of State October 14, 2001.]

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

SECTION 1. Section 13261 of the Water Code is amended to read:

13261. (a) Any person failing to furnish a report or pay a fee under Section 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).

(b) (1) Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount that may not exceed one thousand dollars ($1,000) for each day in which the violation occurs. For purposes of this section only, the state board shall have the same authority and shall follow the same procedures as set forth in Article 2.5 (commencing with Section 13323) of Chapter 5, except that the executive director shall issue the complaint with review by the state board. Civil liability may not be imposed by the

regional board pursuant to this section if the state board has imposed liability against the same person for the same violation.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount that may not exceed five thousand dollars ($5,000) for each day the violation occurs.

(c) Any person discharging or proposing to discharge hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly furnishes a false report under Section 13260, or who either willfully fails to furnish a report or willfully withholds material information under Section 13260 despite actual knowledge of that requirement, may be liable in accordance with subdivision (d) and is guilty of a misdemeanor.

This subdivision does not apply to any waste discharge that is subject to Chapter 5.5 (commencing with Section 13370).

(d) (1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount that may not exceed five thousand dollars ($5,000) for each day the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount that may not exceed twenty-five thousand dollars ($25,000).

SEC. 2. Section 13262 of the Water Code is amended to read:

13262. The Attorney General, at the request of the regional board or the state board, shall petition the superior court for the issuance of a temporary restraining order, temporary injunction, or permanent injunction, or combination thereof, as may be appropriate, requiring any person not complying with Section 13260 to comply therewith.

SEC. 3. Section 13267 of the Water Code is amended to read:

13267. (a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.

(b) (1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the

quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

(2) When requested by the person furnishing a report, the portions of a report that might disclose trade secrets or secret processes may not be made available for inspection by the public but shall be made available to governmental agencies for use in making studies. However, these portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report.

(c) In conducting an investigation pursuant to subdivision (a), the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with. The inspection shall be made with the consent of the owner or possessor of the facilities or, if the consent is withheld, with a warrant duly issued pursuant to the procedure set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting the public health or safety, an inspection may be performed without consent or the issuance of a warrant.

(d) The state board or a regional board may require any person, including a person subject to a waste discharge requirement under Section 13263, who is discharging, or who proposes to discharge, wastes or fluid into an injection well, to furnish the state board or regional board with a complete report on the condition and operation of the facility or injection well, or any other information that may be reasonably required to determine whether the injection well could affect the quality of the waters of the state.

(e) As used in this section, ''evidence'' means any relevant evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in a civil action.

SEC. 4. Section 13323 of the Water Code is amended to read:

13323. (a) Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision of law

authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party so served that a hearing shall be conducted within 60 days after the party has been served. The hearing shall be before a panel of the regional board, consisting of three or more members of the regional board as it may specify, or before the regional board. The person who has been issued a complaint may waive the right to a hearing, in which case the regional board shall not conduct a hearing.

(c) After any hearing, the panel shall report its proposed decision and order to the regional board and shall, at the time it reports its decision to the regional board, supply a copy to the party served with the complaint, the party issuing the complaint, and any other person requesting a copy. Members of the panel may sit as members of the board in deciding the matter. The regional board, after making an independent review of the record and taking such additional evidence as may be necessary and could not reasonably have been offered before the hearing panel, may adopt, with or without revision, the proposed decision and order of the panel.

(d) Orders imposing administrative civil liability shall become effective and final upon issuance thereof, and are not subject to review by any court or agency except as provided by Sections 13320 and 13330. Payment shall be made not later than 30 days from the date on which the order is issued. The time for payment is extended during the period in which a person who is subject to an order seeks review under Section 13320 or 13330. Copies of these orders shall be served by personal service or by registered mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

SEC. 4.5. Section 13327 of the Water Code is amended to read:

13327. In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

SEC. 5. Section 13350 of the Water Code is amended to read:

13350. (a) Any person who (1) intentionally or negligently violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or

(2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, intentionally or negligently discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state, and creates a condition of pollution or nuisance, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other provisions of this division, shall be liable civilly in accordance with subdivision (d) or (e).

(b) (1) Any person who, without regard to intent or negligence, causes or permits any hazardous substance to be discharged in or on any of the waters of the state where it creates a condition of pollution or nuisance, except in accordance with waste discharge requirements or other provisions of this division, shall be strictly liable civilly in accordance with subdivision (d) or (e).

(2) For purposes of this subdivision, the term ''discharge'' includes only those discharges for which Section 13260 directs that a report of waste discharge shall be filed with the regional board.

(3) For purposes of this subdivision, the term ''discharge'' does not include any emission excluded from the applicability of Section 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to Environmental Protection Agency regulations interpreting Section 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

(c) There shall be no liability under subdivision (b) if the discharge is caused solely by any one or combination of the following:

(1) An act of war.

(2) An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(3) Negligence on the part of the state, the United States, or any department or agency thereof; provided, that this paragraph shall not be interpreted to provide the state, the United States, or any department or agency thereof a defense to liability for any discharge caused by its own negligence.

(4) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(5) Any other circumstance or event which causes the discharge despite the exercise of every reasonable precaution to prevent or mitigate the discharge.

(d) The court may impose civil liability either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed fifteen thousand dollars ($15,000) for each day the violation occurs.

(2) The civil liability on a per gallon basis may not exceed twenty dollars ($20) for each gallon of waste discharged.

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars ($5,000) for each day the violation occurs.

(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars ($500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars ($100) for each day in which the violation occurs.

(2) The civil liability on a per gallon basis may not exceed ten dollars ($10) for each gallon of waste discharged.

(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.

(g) The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose, assess, and recover such sums. Except in the case of a violation of a cease and desist order, a regional board or the state board shall make such request only after a hearing, with due notice of the hearing given to all affected persons. In determining such amount, the court shall be subject to Section 13351.

(h) The provisions of Article 3 (commencing with Section 13330) and Article 6 (commencing with Section 13360) of this chapter shall apply to proceedings to impose, assess, and recover an amount pursuant to this article.

(i) Any person who incurs any liability established under this section shall be entitled to contribution for such liability from any third party, in an action in the superior court and upon proof that the discharge was caused in whole or in part by an act or omission of the third party, to the extent that the discharge is caused by the act or omission of the third party, in accordance with the principles of comparative fault.

(j) Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies, civil or criminal, except that no liability shall be recoverable under subdivision (b) for any discharge for which liability is recovered under Section 13385.

(k) The state board shall submit an annual report to the Legislature which shall be available to the public, list all instances in which civil liability has been administratively imposed by a regional board in accordance with subdivision (e) during the preceding year, and indicate the maximum amount of liability which could have been imposed and the amount actually imposed in each instance.

SEC. 6. Section 13351 of the Water Code is amended to read:

13351. In determining the amount of civil liability to be imposed pursuant to this chapter, the superior court shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and such other matters as justice may require.

SEC. 7. Section 13385 of the Water Code is amended to read:

13385. (a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged and fill material permit.

(3) Any requirements established pursuant to Section 13383.

(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act, as amended.

(6) Any requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.

(b) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:

(1) Twenty-five thousand dollars ($25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed

twenty-five dollars ($25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars ($10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), the term ''discharge'' includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) For purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal, except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j) and (k), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for the first serious violation and each additional serious violation in any period of six consecutive months, except that if no serious violation has occurred in the prior six months, the state board or regional board, in lieu of

assessing the penalty applicable to the first serious violation, may elect to require the discharger to spend an amount equal to the penalty for a supplemental environmental project in accordance with the enforcement policy of the state board and any applicable guidance document, or to develop a pollution prevention plan. If the state board or regional board elects to require the discharger to carry out a supplemental environmental project or develop a pollution prevention plan pursuant to this subdivision, a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each additional serious violation in the six-month period that began with the violation that was waived in lieu of the supplemental environmental project or pollution prevention plan.

(2) For the purposes of this section, the following terms have the following meanings:

(A) A ''serious violation'' means any waste discharge that exceeds the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(B) A ''supplemental environmental project'' means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under Section 13385.

(C) A ''period of six consecutive months'' means the period beginning on the day following the date on which a serious violation or one of the violations described in subdivision (i) occurs and ending 180 days after that date.

(i) Notwithstanding any other provision of this division, and except as provided in subdivisions (j) and (k), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(1) Exceeds a waste discharge requirement effluent limitation.

(2) Fails to file a report pursuant to Section 13260.

(3) Files an incomplete report pursuant to Section 13260.

(4) Exceeds a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

(A) An act of war.

(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(D) A bypass of a treatment facility located in the County of Los Angeles during the 2001 calendar year if the applicable waste discharge requirements incorporate a provision for the bypass, and that bypass meets the conditions set forth in Section 122.41 (m)(4) of Title 40 of the Code of Federal Regulations and any more stringent conditions incorporated into the waste discharge requirements and the bypass has been approved by the regional board as meeting those conditions.

(2) (A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress toward compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

(ii) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan that meets the requirements of Section 13263.3.

(iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the waste discharge and the executive officer of the regional board concurs with the demonstration.

(B) Subdivisions (h) and (i) shall become applicable to a waste discharge on the date the waste discharge requirements applicable to the waste discharge are revised and reissued pursuant to Section 13380, unless the regional board does all of the following on or before that date:

(i) Modifies the requirements of the cease and desist order or time schedule order as may be necessary to make it fully consistent with the reissued waste discharge requirements.

(ii) Establishes in the modified cease and desist order or time schedule order a date by which full compliance with the reissued waste discharge requirements shall be achieved. For the purposes of this subdivision, the regional board may not establish this date later than five years from the date the waste discharge requirements were required to be reviewed pursuant to Section 13380. If the reissued waste discharge requirements do not add new effluent limitations or do not include effluent limitations that are more stringent than those in the original waste discharge requirements, the date shall be the same as the final date for compliance in the original cease and desist order or time schedule order or five years from the date that the waste discharge requirements were required to be reviewed pursuant to Section 13380, whichever is earlier.

(iii) Determines that the pollution prevention plan required by clause (ii) of subparagraph (A) is in compliance with the requirements of Section 13263.3 and that the discharger is implementing the pollution prevention plan in a timely and proper manner.

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

(C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. For the purposes of this subdivision, the time schedule may not exceed five years in length. If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(i) Effluent limitations for the pollutant or pollutants of concern.

(ii) Actions and milestones leading to compliance with the effluent limitation.

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan pursuant to Section 13263.3.

(k) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a POTW serving a small community, as defined by subdivision (b) of Section 79084, the state board or the regional board may elect to require the POTW to spend an equivalent amount toward the completion of a compliance project proposed by the POTW, if the state or regional board finds all of the following:

(1) The compliance project is designed to correct the violations within five years.

(2) The compliance project is in accordance with the enforcement policy of the state board.

(3) The POTW has demonstrated that it has sufficient funding to complete the compliance project.

(*l*) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorneys' fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay

persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person's penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(m) Funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(n) (1) The state board shall report annually to the Legislature regarding its enforcement activities. The reports shall include all of the following:

(A) A compilation of the number of violations of waste discharge requirements in the previous year.

(B) A record of the formal and informal compliance and enforcement actions taken for each violation.

(C) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

(D) Recommendations, if any, necessary for improvements to the enforcement program in the following year.

(2) The report shall be submitted to the Chairperson of the Assembly Committee on Environmental Safety and Toxic Materials and the Chairperson of the Senate Committee on Environmental Quality on or before March 1, 2001, and annually thereafter.

SEC. 8. Section 13387 of the Water Code is amended to read:

13387. (a) Any person who knowingly or negligently does any of the following is subject to criminal penalties as provided in subdivisions (b), (c), and (d):

(1) Violates Section 13375 or 13376.

(2) Violates any waste discharge requirements or dredged or fill material permit.

(3) Violates any order or prohibition issued pursuant to Section 13243 or 13301, if the activity subject to the order or prohibition is subject to regulation under this chapter.

(4) Violates any requirement of Section 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act, as amended.

(5) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substances which the person knew or reasonably should have known could cause personal injury or property damage.

(6) Introduces any pollutant or hazardous substance into a sewer system or into a publicly owned treatment works, except in accordance with any applicable pretreatment requirements, which pollutant or hazardous substance causes the treatment works to violate waste discharge requirements.

(b) Any person who negligently commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000), nor more than twenty-five

thousand dollars ($25,000), for each day in which the violation occurs, or by imprisonment for not more than one year in the county jail, or both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, subdivision (c), or subdivision (d), punishment shall be by a fine of not more than fifty thousand dollars ($50,000) for each day in which the violation occurs, or by imprisonment of not more than two years, or by both.

(c) Any person who knowingly commits any of the violations set forth in subdivision (a) shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000), nor more than fifty thousand dollars ($50,000), for each day in which the violation occurs, or by imprisonment in the state prison for not more than three years, or by both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision or subdivision (d), punishment shall be by a fine of not more than one hundred thousand dollars ($100,000) for each day in which the violation occurs, or by imprisonment in the state prison of not more than six years, or by both.

(d) (1) Any person who knowingly commits any of the violations set forth in subdivision (a), and who knows at the time that the person thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than two hundred fifty thousand dollars ($250,000) or imprisonment in the state prison of not more than 15 years, or both. A person which is an organization shall, upon conviction under this subdivision, be subject to a fine of not more than one million dollars ($1,000,000). If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, the maximum punishment shall be a fine of not more than five hundred thousand dollars ($500,000) or imprisonment in the state prison of not more than 30 years, or both. A person which is an organization shall, upon conviction for a violation committed after a first conviction of the person under this subdivision, be subject to a fine of not more than two million dollars ($2,000,000). Any fines imposed pursuant to this subdivision shall be in addition to any fines imposed pursuant to subdivision (c).

(2) In determining whether a defendant who is an individual knew that the defendant's conduct placed another person in imminent danger of death or serious bodily injury, the defendant is responsible only for actual awareness or actual belief that the defendant possessed, and knowledge possessed by a person other than the defendant, but not by the defendant personally, cannot be attributed to the defendant.

(e) Any person who knowingly makes any false statement, representation, or certification in any record, report, plan, notice to comply, or other document filed with a regional board or the state board, or who knowingly falsifies, tampers with, or renders inaccurate any

monitoring device or method required under this division shall be punished by a fine of not more than twenty-five thousand dollars ($25,000), or by imprisonment in the state prison for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of the person under this subdivision, punishment shall be by a fine of not more than twenty-five thousand dollars ($25,000) per day of violation, or by imprisonment in the state prison of not more than four years, or by both.

(f) For purposes of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) For purposes of this section, ''organization,'' ''serious bodily injury,'' ''person,'' and ''hazardous substance'' shall have the same meaning as in Section 309(c) of the Clean Water Act, as amended.

(h) Funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

SEC. 9. Section 13443 of the Water Code is amended to read:

13443. Upon application by a regional board that is attempting to remedy a significant unforeseen water pollution problem, posing an actual or potential public health threat, or is overseeing and tracking the implementation of a supplemental environmental project required as a condition of an order imposing administrative civil liability, and for which the regional board does not have adequate resources budgeted, the state board may order moneys to be paid from the account to the regional board to assist it in responding to the problem.

SEC. 10. Section 13627.1 of the Water Code is amended to read:

13627.1. (a) Any person who operates a wastewater treatment plant who does not hold a valid, unexpired certificate of the appropriate grade issued pursuant to this chapter is guilty of a misdemeanor and may be liable civilly in an amount not to exceed one hundred dollars ($100) for each day of violation.

(b) Any person or entity that owns or operates a wastewater treatment plant that employs, or allows the employment of, any person as a wastewater treatment plant operator who does not hold a valid and unexpired certificate of the appropriate grade issued pursuant to this chapter is guilty of a misdemeanor and may be liable civilly in an amount not to exceed one hundred dollars ($100) for each day of violation.

(c) Any person who commits any of the acts listed in paragraph (2), (3), or (5) of subdivision (e) of Section 13627 or paragraph (3) or (5) of subdivision (c) of Section 13627.3, or who engages in dishonest conduct during an examination for certification, may be liable civilly in an amount not to exceed five thousand dollars ($5,000) for each violation.

SEC. 10.5. Section 13627.2 is added to the Water Code, to read:

13627.2. Any person who submits to the state board false or misleading information on an application for a certificate or on an application for registration may be liable civilly in an amount not to exceed five thousand dollars ($5,000) for each violation.

SEC. 10.7. Section 13627.2 of the Water Code is amended and renumbered to read:

13627.3. (a) Any person or entity that contracts with the owner of a wastewater treatment plant to operate that plant shall register with the state board, and shall, within a year after the registration or the renewal of the registration, and annually thereafter, prepare and submit to the state board a report with all of the following information:

(1) The name and address of the person or entity.

(2) The name and address of the wastewater treatment plants which the person or entity operates, or has operated during the preceding year, and the name of the applicable regional board which oversees each wastewater treatment plant.

(3) The name and grade of each wastewater treatment plant operator employed at each plant.

(4) Other information which the state board requires.

(b) The state board shall, by regulation, prescribe the procedures, and requirements for, registration pursuant to subdivision (a).

(c) The state board may refuse to grant, and may suspend or revoke, any registration issued by the state board pursuant to this section for good cause, including, but not limited to, any of the following reasons:

(1) The submission of false or misleading information on an application for registration.

(2) Employment of a person to operate a wastewater treatment plant who does not hold a valid, unexpired certificate of the appropriate grade.

(3) Willfully or negligently causing or allowing a violation of waste discharge requirements or permits issued pursuant to the Clean Water Act (33 U.S.C. Sec. 1251 et seq.).

(4) Failure to meet the registration requirements prescribed by the state board pursuant to subdivision (b).

(5) Failure to use reasonable care in the management or operation of the wastewater treatment plant.

(d) The state board shall conduct all proceedings relating to the refusal to grant, or the suspension or revocation of, registration pursuant to subdivision (c) in accordance with the rules adopted pursuant to Section 185.

(e) The state board shall establish a fee schedule to pay for its costs to implement this section.

(f) Any person or entity that fails to comply with subdivision (a) is guilty of a misdemeanor and may be civilly liable in an amount not to exceed one thousand dollars ($1,000) for each day of the violation.

SEC. 10.9. Section 13627.3 of the Water Code is amended and renumbered to read:

13627.4. (a) The civil liability described in Section 13627.1, 13627.2, or 13627.3 may be administratively imposed in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5, except that the executive director shall issue the complaint with review by the state board.

(b) A remedy under this chapter is in addition to, and does not supersede or limit, other remedy, civil or criminal, except that no liability is recoverable against an operator under subdivision (c) of Section 13627.1 for a violation for which liability is recovered against the operator under Section 13350 or 13385.

SEC. 11. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 870

An act to add Part 8.7 (commencing with Section 13040) to the Education Code, relating to California Native Americans, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

I am signing Senate Bill 41, which requires the State Librarian to develop instructional resources for use in public schools and an information project to educate the general public on the State's Native Americans.

While I believe this new project will have a significant impact on how our students learn about Native Americans, I must reduce the appropriations as follows: The sum of $175,000 is hereby appropriated from the General Fund for the purposes of this act as follows:

a) One hundred thousand dollars ($100,000) to the State Librarian for the purpose of Part 8.7 (commencing with Section 13040) of the Education Code.

b) Twenty-five thousand dollars ($25,000) to the State Librarian for the purposes of Section 3 of this act.

c) Fifty thousand dollars ($50,000) to the State Department of Education for supporting the Curriculum Development and Supplemental Materials Commission and

the State Board of Education in the review of the standards-based instructional resources pursuant to this act.

GRAY DAVIS, Governor

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

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

(a) California's American Indians are the first peoples to have settled California, perhaps some 15,000 years before European colonization.

(b) California was a hospitable environment, and was home to approximately one-third of all American Indians prior to colonization. These peoples had developed widespread and unique cultures, including as many as 100 district languages.

(c) Colonization occurred by four distinct groups, Spanish, Russian, Mexican, and American. Each had its own distinct, yet significant, impact upon American Indians within California.

(d) The first people of California have a unique set of cultures that greatly enrich California and these have survived despite the many threats to them. There are 107 recognized Indian tribal governments in the State of California, the most of any state in the nation. California residents and pupils need to know more about the contemporary status of, and the social, governmental, and economic issues affecting California Native Americans.

(e) California Native American tribes differ from the Midwestern and Eastern Native American tribes in their original culture and language, their social evolution, and their current cultural practices. With a stronger educational foundation, Californians of the future will be better informed about the unique identities and cultural contributions of these tribes.

(f) Currently, the instructional resources available for use in the California public schools do not include accurate contemporary information concerning Native Americans in this state. Therefore, little can be taught that draws together the historic circumstances of California Native Americans with their lives and futures in today's California. Unfortunately, as a result, myths and faulty stereotypes may be perpetuated.

(g) Tribal sovereignty, the constitutional and legal right of tribes to govern themselves and tribal lands in accordance with federal law and under a unique nation-to-nation status, is rarely understood. However, these matters are important, as tribes have governmental powers, responsibilities, and authority in relationship to the state and local governments.

(h) Instructional materials that incorporate California Native American history, culture, sovereignty, and contemporary issues of

modern Native Americans, and their relationship and place in California's diverse governmental, racial, and cultural communities will provide California's children a more complete education and academic preparation to interact in today's world.

(i) It is in the best interest of all the people, and of the future of this state, to ensure that each school district, charter school, county office of education, and California Native American education center have the opportunity to seek, learn, review, develop, and share culturally accurate instructional materials.

(j) The highest quality instructional materials that include a discussion of the role of California Native Americans, in the history, culture, governance, and socioeconomic dynamics of the state should be available to all Californians.

SEC. 2. Part 8.7 (commencing with Section 13040) is added to the Education Code, to read:

## PART 8.7. CALIFORNIA NATIVE AMERICAN PUBLIC EDUCATION GRANT PROGRAM

13040. (a) The State Librarian shall expend the funds allocated for the purposes of this part to develop, in consultation with the State Department of Education and the Curriculum Development and Supplemental Materials Commission related to history-social science curriculum framework and content standards, California Native American instructional resources for use in the public schools maintaining any combination of instructional settings from kindergarten to grade 12, inclusive.

(b) The State Librarian may award grants on a competitive basis or shall contract with instructional resource developers to prepare the instructional resources consistent with the state curriculum framework and content standards where the teaching of Native American history is identified, and shall consult with a broadly based group of experts to advise upon and review the instructional resources. The instructional resources shall be subject to Section 13041 and all other relevant statutes governing the content of educational materials prior to distribution to the public schools.

(c) In carrying out subdivision (b), the State Librarian is encouraged to do or enable each of the following, to the extent possible:

(1) Involve California Native Americans in the development of the instructional resources.

(2) Consult with local and regional consortia of organizations and individuals engaged in similar educational, research, and development efforts.

(3) Coordinate and collaborate with organizations and individuals engaging in similar educational, research, and development endeavors.

(4) Utilize creative and innovative methods and approaches in research for, and development of, the instructional resources.

(5) Seek matching funds, in-kind contributions, or other sources of support to supplement the funds provided in support of this part.

(6) Propose the use of a variety of media, including new technology and the arts, to creatively and strategically appeal to pupils while enhancing and enriching community-based educational efforts.

(7) Include scholarly inquiry related to the variety of experiences of California Native Americans.

(8) Add relevant materials to, or catalogue relevant materials in, libraries and other repositories for the creation, publication, and distribution of bibliographies, curriculum guides, oral histories, and other resource directories and supporting the continued development of scholarly work on this subject by making a broad range of archival, library, and research materials more accessible to the American public.

13041. (a) The State Librarian shall submit to the Curriculum Development and Supplemental Materials Commission the instructional resources developed pursuant to Section 13040.

(b) The Curriculum Development and Supplemental Materials Commission shall hold a public hearing regarding the instructional resources and shall recommend them, along with any modifications that the commission determines to be appropriate, to the State Board of Education.

(c) (1) The State Board of Education shall hold a public hearing regarding the recommendation of the Curriculum Development and Supplemental Materials Commission pursuant to subdivision (b) and shall approve the instructional resources along with any modifications that the State Board of Education determines to be appropriate.

(2) The State Board of Education shall review the instructional resources approved pursuant to subdivision (c) in relation to the history-social science content standards adopted pursuant to Section 60605 and shall, at any subsequent revision, make adjustments, if any, to the content standards that it determines to be appropriate. The State Board of Education shall also ensure that the approved instructional resources are used as an advisory tool in developing the next revision of the history-social science curriculum framework and standards.

(d) Upon approval by the State Board of Education pursuant to subdivision (c), the instructional resources shall be made available to educators as efficiently and effectively as available funding will allow.

13042. On or before January 1, 2003, the State Librarian shall report to the Governor and the appropriate fiscal and policy committees of each

house of the Legislature on the use of funds provided for the purposes of this part.

SEC. 3. The California State Librarian, with the cooperation of the University of California, shall develop the California's American Indian Nations Information Project within the California State Library. The State Library shall develop in-depth resources on California's federally recognized tribes and tribal peoples, including, but not limited to, articles, photographs, sound recordings, and other materials, as well as related appropriate textual explanation and contextual information that will assist the tribes, the general public, and pupils to respectfully appreciate these materials and the rich cultures they represent. This shall include, but shall not be limited to, facilitating online access to the California Indian Library Collection or any other suitable materials, to the maximum extent practicable. The instructional resources developed pursuant to Part 8.7 (commencing with Section 13040) of the Education Code shall be included in the California's American Indian Nations Information Project. This section is binding upon the University of California only if consented to by resolution of the Regents of the University of California.

SEC. 4. The sum of four hundred twenty-five thousand dollars ($425,000) is hereby appropriated from the General Fund for the purposes of this act as follows:

(a) Two hundred fifty thousand dollars ($250,000) to the State Librarian for the purposes of Part 8.7 (commencing with Section 13040) of the Education Code.

(b) Seventy-five thousand dollars ($75,000) to the State Librarian for the purposes of Section 3 of this act.

(c) One hundred thousand dollars ($100,000) to the State Department of Education for supporting the Curriculum Development and Supplemental Materials Commission and the State Board of Education in the review of the standards-based instructional resources pursuant to 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 to permit the timely development of California Native American instructional resources, it is necessary that this act take effect immediately.

# CHAPTER 871

An act to add Section 44017.4 to the Health and Safety Code, relating to emission control.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 44017.4 is added to the Health and Safety Code, to read:

44017.4. (a) Upon initial registration with the Department of Motor Vehicles, a passenger vehicle or pickup truck that is a specially constructed vehicle, as defined in Section 580 of the Vehicle Code, shall be inspected by stations authorized to perform referee functions. This inspection shall be for the purposes of determining the engine model-year used in the vehicle or the vehicle model-year, and the emission control system application. The owner shall have the option to choose whether the inspection is based on the engine model-year used in the vehicle or the vehicle model-year.

(1) In determining the engine model-year, the referee shall compare the engine to engines of the era that the engine most closely resembles. The referee shall assign the 1960 model-year to the engine in any specially constructed vehicle that does not sufficiently resemble a previously manufactured engine. The referee shall require only those emission control systems that are applicable to the established engine model-year and that the engine reasonably accommodates in its present form.

(2) In determining the vehicle model-year, the referee shall compare the vehicle to vehicles of the era that the vehicle most closely resembles. The referee shall assign the 1960 model-year to any specially constructed vehicle that does not sufficiently resemble a previously manufactured vehicle. The referee shall require only those emission control systems that are applicable to the established model-year and that the vehicle reasonably accommodates in its present form.

(b) Upon the completion of the inspection, the referee shall affix a tamper-resistant label to the vehicle and issue a certificate that establishes the engine model-year or the vehicle model-year, and the emission control system application.

(c) The Department of Motor Vehicles shall annually provide an initial registration to no more than the first 500 vehicles that meet the

criteria described in subdivision (a) that are presented to that department for registration.

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## CHAPTER 872

An act to add Section 33128.5 to the Education Code, relating to school finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 33128.5 is added to the Education Code, to read:

33128.5. Notwithstanding any other provision of law, a county unified school district with fewer than 3,000 units of average daily attendance may use up to 30 percent of its budget reserve to pay for utility costs, including propane, fuel, and electricity costs, in each of the 2000–01 and 2001–02 fiscal years, and shall not for that reason receive a ''qualified'' or ''negative'' financial certification by the State Department of Education for three fiscal years after using that amount of its budget reserve to pay for utility costs if the use of that amount results in available reserves falling below 3 percent of its budget reserve.

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 rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, that endanger the health, welfare, and safety of the people of this state, and to encourage programs that encourage curtailments at the earliest possible time, it is necessary for this act to take effect immediately.

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## CHAPTER 873

An act to amend Sections 65850.5, 66412, 66473.1, 66475.1, 66475.2, and 66499.35 of the Government Code, relating to land use.

[Approved by Governor October 13, 2001. Filed with
Secretary of State October 14, 2001.]

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

SECTION 1. Section 65850.5 of the Government Code is amended to read:

65850.5. (a) The legislative body of any city or county shall not enact an ordinance that has the effect of prohibiting or of unreasonably restricting the use of solar energy systems other than for the preservation or protection of the public health or safety. This prohibition shall be applicable to charter cities because the promotion of the use of nonfossil fuel sources of energy, including solar energy and energy conservation measures, is a matter of statewide concern.

(b) This section shall not apply to ordinances that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency, or that allow for an alternative system of comparable cost and efficiency.

(c) For the purposes of this section, ''solar energy system'' shall have the same meaning as set forth in Section 801.5 of the Civil Code.

SEC. 2. Section 66412 of the Government Code is amended to read:

66412. This division shall be inapplicable to:

(a) The financing or leasing of apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobilehome parks, or trailer parks.

(b) Mineral, oil, or gas leases.

(c) Land dedicated for cemetery purposes under the Health and Safety Code.

(d) A lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable coastal plan, and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, any applicable coastal plan, and zoning and building ordinances, to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to

facilitate the relocation of existing utilities, infrastructure, or easements. No tentative map, parcel map, or final map shall be required as a condition to the approval of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of survey shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code.

(e) Boundary line or exchange agreements to which the State Lands Commission or a local agency holding a trust grant of tide and submerged lands is a party.

(f) Any separate assessment under Section 2188.7 of the Revenue and Taxation Code.

(g) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a community apartment project, as defined in Section 1351 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 75 percent of the units in the project were occupied by record owners of the project on March 31, 1982.

(2) A final or parcel map of the project was properly recorded, if the property was subdivided, as defined in Section 66424, after January 1, 1964, with all of the conditions of that map remaining in effect after the conversion.

(3) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(4) Subject to compliance with subdivision (e) of Section 1351 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the project as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the project shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the project.

(h) Unless a parcel or final map was approved by the legislative body of a local agency, the conversion of a stock cooperative, as defined in Section 1351 of the Civil Code, to a condominium, as defined in Section 783 of the Civil Code, but only if all of the following requirements are met:

(1) At least 51 percent of the units in the cooperative were occupied by stockholders of the cooperative on January 1, 1981, or individually owned by stockholders of the cooperative on January 1, 1981. As used in this paragraph, a cooperative unit is ''individually owned'' if and only

if the stockholder of that unit owns or partially owns an interest in no more than one unit in the cooperative.

(2) No more than 25 percent of the shares of the cooperative were owned by any one person, as defined in Section 17, including an incorporator or director of the cooperative, on January 1, 1981.

(3) A person renting a unit in a cooperative shall be entitled at the time of conversion to all tenant rights in state or local law, including, but not limited to, rights respecting first refusal, notice, and displacement and relocation benefits.

(4) The local agency certifies that the above requirements were satisfied if the local agency, by ordinance, provides for that certification.

(5) Subject to compliance with subdivision (e) of Section 1351 of the Civil Code, all conveyances and other documents necessary to effectuate the conversion shall be executed by the required number of owners in the cooperative as specified in the bylaws or other organizational documents. If the bylaws or other organizational documents do not expressly specify the number of owners necessary to execute the conveyances and other documents, a majority of owners in the cooperative shall be required to execute the conveyances or other documents. Conveyances and other documents executed under the foregoing provisions shall be binding upon and affect the interests of all parties in the cooperative.

(i) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a windpowered electrical generation device on the land, if the project is subject to discretionary action by the advisory agency or legislative body.

(j) The leasing or licensing of a portion of a parcel, or the granting of an easement, use permit, or similar right on a portion of a parcel, to a telephone corporation as defined in Section 234 of the Public Utilities Code, exclusively for the placement and operation of cellular radio transmission facilities, including, but not limited to, antennae support structures, microwave dishes, structures to house cellular communications transmission equipment, power sources, and other equipment incidental to the transmission of cellular communications, if the project is subject to discretionary action by the advisory agency or legislative body.

(k) Leases of agricultural land for agricultural purposes. As used in this subdivision, ''agricultural purposes'' means the cultivation of food or fiber, or the grazing or pasturing of livestock.

SEC. 3. Section 66473.1 of the Government Code is amended to read:

66473.1. (a) The design of a subdivision for which a tentative map is required pursuant to Section 66426 shall provide, to the extent

feasible, for future passive or natural heating or cooling opportunities in the subdivision.

(b) (1) Examples of passive or natural heating opportunities in subdivision design, include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure.

(2) Examples of passive or natural cooling opportunities in subdivision design include design of lot size and configuration to permit orientation of a structure to take advantage of shade or prevailing breezes.

(c) In providing for future passive or natural heating or cooling opportunities in the design of a subdivision, consideration shall be given to local climate, to contour, to configuration of the parcel to be divided, and to other design and improvement requirements, and that provision shall not result in reducing allowable densities or the percentage of a lot that may be occupied by a building or structure under applicable planning and zoning in effect at the time the tentative map is filed.

(d) The requirements of this section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.

(e) For the purposes of this section, ''feasible'' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

SEC. 4. Section 66475.1 of the Government Code is amended to read:

66475.1. Whenever a subdivider is required pursuant to Section 66475 to dedicate roadways to the public, the subdivider may also be required to dedicate additional land as may be necessary and feasible to provide bicycle paths for the use and safety of the residents of the subdivision.

SEC. 5. Section 66475.2 of the Government Code is amended to read:

66475.2. (a) There may be imposed by local ordinance a requirement of a dedication or an irrevocable offer of dedication of land within the subdivision for local transit facilities such as bus turnouts, benches, shelters, landing pads and similar items that directly benefit the residents of a subdivision. The irrevocable offers may be terminated as provided in subdivisions (c) and (d) of Section 66477.2.

(b) Only the payment of fees in lieu of the dedication of land may be required in subdivisions that consist of the subdivision of airspace in existing buildings into condominium projects, stock cooperatives, or community apartment projects, as those terms are defined in Section 1351 of the Civil Code.

SEC. 6. Section 66499.35 of the Government Code is amended to read:

66499.35. (a) Any person owning real property or a vendee of that person pursuant to a contract of sale of the real property may request, and a local agency shall determine, whether the real property complies with the provisions of this division and of local ordinances enacted pursuant to this division. If a local agency determines that the real property complies, the city or the county shall cause a certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate of compliance shall identify the real property and shall state that the division of the real property complies with applicable provisions of this division and of local ordinances enacted pursuant to this division. The local agency may impose a reasonable fee to cover the cost of issuing and recording the certificate of compliance.

(b) If a local agency determines that the real property does not comply with the provisions of this division or of local ordinances enacted pursuant to this division, it shall issue a conditional certificate of compliance. A local agency may, as a condition to granting a conditional certificate of compliance, impose any conditions that would have been applicable to the division of the property at the time the applicant acquired his or her interest therein, and that had been established at that time by this division or local ordinance enacted pursuant to this division, except that where the applicant was the owner of record at the time of the initial violation of the provisions of this division or of the local ordinances who by a grant of the real property created a parcel or parcels in violation of this division or local ordinances enacted pursuant to this division, and the person is the current owner of record of one or more of the parcels which were created as a result of the grant in violation of this division or those local ordinances, then the local agency may impose any conditions that would be applicable to a current division of the property. Upon making the determination and establishing the conditions, the city or county shall cause a conditional certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate shall serve as notice to the property owner or vendee who has applied for the certificate pursuant to this section, a grantee of the property owner, or any subsequent transferee or assignee of the property that the fulfillment and implementation of these conditions shall be required prior to subsequent issuance of a permit or other grant of approval for development of the property.

Compliance with these conditions shall not be required until the time that a permit or other grant of approval for development of the property is issued by the local agency.

(c) A certificate of compliance shall be issued for any real property that has been approved for development pursuant to Section 66499.34.

(d) A recorded final map, parcel map, official map, or an approved certificate of exception shall constitute a certificate of compliance with respect to the parcels of real property described therein.

(e) An official map prepared pursuant to subdivision (b) of Section 66499.52 shall constitute a certificate of compliance with respect to the parcels of real property described therein and may be filed for record, whether or not the parcels are contiguous, so long as the parcels are within the same section or, with the approval of the city engineer or county surveyor, within contiguous sections of land.

(f) (1) Each certificate of compliance or conditional certificate of compliance shall include information the local agency deems necessary, including, but not limited to, all of the following:

(A) Name or names of owners of the parcel.

(B) Assessor parcel number or numbers of the parcel.

(C) The number of parcels for which the certificate of compliance or conditional certificate of compliance is being issued and recorded.

(D) Legal description of the parcel or parcels for which the certificate of compliance or conditional certificate of compliance is being issued and recorded.

(E) A notice stating as follows:

This certificate relates only to issues of compliance or noncompliance with the Subdivision Map Act and local ordinances enacted pursuant thereto. The parcel described herein may be sold, leased, or financed without further compliance with the Subdivision Map Act or any local ordinance enacted pursuant thereto. Development of the parcel may require issuance of a permit or permits, or other grant or grants of approval.

(F) Any conditions to be fulfilled and implemented prior to subsequent issuance of a permit or other grant of approval for development of the property, as specified in the conditional certificate of parcel compliance.

(2) Local agencies may process applications for certificates of compliance or conditional certificates of compliance concurrently and may record a single certificate of compliance or a single conditional certificate of compliance for multiple parcels. Where a single certificate of compliance or conditional certificate of compliance is certifying multiple parcels, each as to compliance with the provisions of this division and with local ordinances enacted pursuant thereto, the single certificate of compliance or conditional certificate of compliance shall

clearly identify, and distinguish between, the descriptions of each such parcel.

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## CHAPTER 874

An act to amend Sections 14536, 14537, 14538, 14539, 14541, 14549.1, 14549.6, 14571.3, 14588.1, 14588.2, 14591.2, and 14591.6 of, and to repeal Section 19524 of, the Public Resources Code, and to amend Section 9 of Chapter 817 of the Statutes of 1999, relating to recycling, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 14536 of the Public Resources Code is amended to read:

14536. (a) Except as provided in subdivision (b), the director shall adopt, amend, or repeal all rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) (1) The director shall adopt regulations, and may adopt emergency regulations for the purposes of implementing Sections 14538, 14539, 14541, 14549.1, 14550, 14561, 14574, 14575, 14588.1, 14588.2, and 14591.

(2) Any emergency regulations, if adopted, shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, including subdivision (e) of Section 11349.1 of the Government Code, any emergency regulations adopted pursuant to this section shall be filed with, but not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the director.

SEC. 2. Section 14537 of the Public Resources Code is amended to read:

14537. The department shall keep accurate books, records, and accounts of all of its dealings, and these books, records, and accounts are subject to an annual audit by an auditing firm selected by the department. The auditing firm or the department shall also conduct a selective audit of entities making payments to, or receiving payments from, the department to determine whether redemption payments and applicable processing fees are being paid to the department on all beverage containers sold in California, and that refund values and processing payments are being paid out properly by the department.

SEC. 3. Section 14538 of the Public Resources Code is amended to read:

14538. (a) The department shall certify the operators of recycling centers pursuant to this section. The director shall adopt, by regulation, a procedure for the certification of recycling centers, including standards and requirements for certification. These regulations shall require that all information be submitted to the department under penalty of perjury. A recycling center shall meet all of the standards and requirements contained in the regulations for certification. The regulations shall require, but shall not be limited to requiring, that all of the following conditions be met for certification:

(1) The operator of the recycling center demonstrates, to the satisfaction of the department, that the operator will operate in accordance with this division.

(2) If one or more certified entities have operated at the same location within the past five years, the operations at the location of the recycling center exhibit, to the satisfaction of the department, a pattern of operation in compliance with the requirements of this division and regulations adopted pursuant to this division.

(3) The operator of the recycling center notifies the department promptly of any material change in the nature of his or her operations which conflicts with information submitted in the operator's application for certification.

(b) A certified recycling center shall comply with all of the following requirements for operation:

(1) The operator of the recycling center shall not pay a refund value for, or receive a refund value from any processor for, any food or drink packaging material or any beverage container or other product that does not have a refund value established pursuant to Section 14560.

(2) The operator of a recycling center shall take those actions that satisfy the department to prevent the payment of a refund value for any food or drink packaging material or any beverage container or other product that does not have a refund value established pursuant to Section 14560.

(3) Unless exempted pursuant to subdivision (b) of Section 14572, a certified recycling center shall accept, and pay at least the refund value for, all empty beverage containers, regardless of type.

(4) A certified recycling center shall not pay any refund values, processing payments, or administrative fees to a noncertified recycler.

(5) A certified recycling center shall not pay any refund values, processing payments, or administrative fees on empty beverage containers or other containers that the certified recycling center knew, or should have known, were coming into the state from out of the state.

(6) A certified recycling center shall not claim refund values, processing payments, or administrative fees on empty beverage containers that the certified recycling center knew, or should have known, were received from noncertified recyclers or on beverage containers that the certified recycling center knew, or should have known, come from out of the state.

(7) A certified recycling center shall prepare and maintain the following documents involving empty beverage containers, as specified by the department by regulation:

(A) Shipping reports that are required to be prepared by the recycling center, or that are required to be obtained from other recycling centers.

(B) Consumer transaction receipts.

(C) Consumer transaction logs.

(D) Rejected container receipts on materials subject to this division.

(E) Receipts for transactions with beverage manufacturers on materials subject to this division.

(F) Receipts for transactions with beverage distributors on materials subject to this division.

(G) Documents authorizing the recycling center to cancel empty beverage containers.

(H) Weight tickets.

(8) In addition to the requirements of paragraph (7), a certified recycling center shall cooperate with the department and make available its records of scrap transactions when the review of these records is necessary for an audit or investigation by the department.

(c) The department may recover, in restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2, payments made from the fund to the certified recycling center pursuant to Section 14573.5 that are based on the documents specified in paragraph (7), that are not prepared or maintained in compliance with the department's regulations, and that do not allow the department to verify claims for program payments.

(d) The department may certify a recycling center that will operate less than 30 hours a week, as specified in paragraph (2) of subdivision (b) of Section 14571.

SEC. 4. Section 14539 of the Public Resources Code is amended to read:

14539. (a) The department shall certify processors pursuant to this section. The director shall adopt, by regulation, requirements and standards for certification. The regulations shall require, but shall not be limited to requiring, that all of the following conditions be met for certification:

(1) The processor demonstrates to the satisfaction of the department that the processor will operate in accordance with this division.

(2) If one or more certified entities have operated at the same location within the past five years, the operations at the location of the processor exhibit, to the satisfaction of the department, a pattern of operation in compliance with the requirements of this division and regulations adopted pursuant to this division.

(3) The processor notifies the department promptly of any material change in the nature of the processor's operations that conflicts with the information submitted in the operator's application for certification.

(b) A certified processor shall comply with all of the following requirements for operation:

(1) The processor shall not pay a refund value for, or receive a refund value from the department for, any food or drink packaging material or any beverage container or other product that does not have a refund value established pursuant to Section 14560.

(2) The processor shall take those actions that satisfy the department to prevent the payment of a refund value for any food or drink packaging material or any beverage container or other product that does not have a refund value established pursuant to Section 14560.

(3) Unless exempted pursuant to subdivision (b) of Section 14572, the processor shall accept, and pay at least the refund value for, all empty beverage containers, regardless of type, for which the processor is certified.

(4) A processor shall not pay any refund values, processing payments, or administrative fees to a noncertified recycler. A processor may pay refund values, processing payments, or administrative fees to any entity that is identified by the department on its list of certified recycling centers.

(5) A processor shall not pay any refund values, processing payments, or administrative fees on empty beverage containers or other containers that the processor knew, or should have known, were coming into the state from out of the state.

(6) A processor shall not claim refund values, processing payments, or administrative fees on empty beverage containers that the processor knew, or should have known, were received from noncertified recyclers or on beverage containers that the processor knew, or should have

known, come from out of the state. A processor may claim refund values, processing payments, or administrative fees on any empty beverage container that does not come from out of the state and that is received from any entity that is identified by the department on its list of certified recycling centers.

(7) A processor shall take the actions necessary and approved by the department to cancel containers to render them unfit for redemption.

(8) A processor shall prepare or maintain the following documents involving empty beverage containers, as specified by the department by regulation:

(A) Shipping reports that are required to be prepared by the processor or that are required to be obtained from recycling centers.

(B) Processor invoice reports.

(C) Cancellation verification documents.

(D) Documents authorizing recycling centers to cancel empty beverage containers.

(E) Processor-to-processor transaction receipts.

(F) Rejected container receipts on materials subject to this division.

(G) Receipts for transactions with beverage manufacturers on materials subject to this division.

(H) Receipts for transactions with distributors on materials subject to this division.

(I) Weight tickets.

(9) In addition to the requirements of paragraph (7), a processor shall cooperate with the department and make available its records of scrap transactions when the review of these records is necessary for an audit or investigation by the department.

(10) The department may recover, in restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2, any payments made by the department to the processor pursuant to Section 14573 that are based on the documents specified in paragraph (8), that are not prepared or maintained in compliance with the department's regulations, and that do not allow the department to verify claims for program payments.

SEC. 5. Section 14541 of the Public Resources Code is amended to read:

14541. (a) The department may issue a certificate pursuant to an initial or renewal application for certification as probationary, and the department may issue any other certificate as probationary pursuant to an enforcement action.

(b) A probationary certificate issued pursuant to this section shall be issued for a limited period of not more than two years. Before the end of the probationary period, the department shall issue a nonprobationary certificate, extend the probationary period for not more than one year, or, after notice to the probationary certificate holder, revoke the

probationary certificate. Subsequent to the revocation, the former probationary certificate holder may request a hearing, which, notwithstanding, Section 11445.20 of the Government Code, shall be conducted in the same form as a hearing for an applicant whose original application for certification is denied.

(c) If a hearing is requested pursuant to subdivision (b) and the party requesting the hearing fails to appear on the date scheduled, and does not notify the department at least five days prior to the hearing date that the party will not appear, the department may recover from the party all costs and fees incurred by the department, including attorneys' and experts' fees, and any other cost associated with preparing for, or conducting, the hearing.

(d) If conditions are imposed on the certificate holder as part of a disciplinary proceeding conducted pursuant to Section 14591.2, the certificate shall be considered probationary. If, at any time, the certificate holder violates any term or condition of the probationary certificate, the certificate may be revoked or suspended, after three days' notice, without any further hearing by the department.

SEC. 6. Section 14549.1 of the Public Resources Code is amended to read:

14549.1. In order to improve the quality and marketability of glass containers collected for recycling in the state by curbside recycling programs, the department may, consistent with Section 14581 and subject to the availability of funds, pay a quality glass incentive payment to either an operator of a curbside recycling program registered pursuant to Section 14551.5, or to any other entity certified pursuant to this division, that color sorts glass beverage containers for recycling. The total amount paid by the department pursuant to this section shall not exceed three million dollars ($3,000,000) per calendar year. The department shall make a quality glass incentive payment based on all of the following:

(a) The amount of the quality glass incentive payment shall be up to twenty-five dollars ($25) per ton, as determined by the department.

(b) The department shall make a quality glass incentive payment only for color-sorted glass beverage containers that are substantially free of contamination.

(c) The department shall make a quality glass incentive payment only for glass beverage containers that are either collected color sorted by curbside recycling programs, or collected commingled by curbside recycling programs and subsequently color sorted by the collector or any other entity certified pursuant to this division.

(d) Only one payment shall be made for each color-sorted glass beverage container collected.

SEC. 7. Section 14549.6 of the Public Resources Code is amended to read:

14549.6. (a) The department, consistent with Section 14581 and subject to the availability of funds, shall annually pay a total of fifteen million dollars ($15,000,000) per fiscal year to operators of curbside programs and neighborhood dropoff programs that accept all types of empty beverage containers for recycling. The payments shall be for each container collected by the curbside or neighborhood dropoff programs and properly reported to the department by processors, based upon all of the following:

(1) The payment amount shall be calculated based upon the volume of beverage containers collected during the fiscal year by curbside and neighborhood dropoff programs.

(2) The per-container rate shall be calculated by dividing the total volume of beverage containers collected, as determined pursuant to paragraph (1), into the sum of fifteen million dollars ($15,000,000).

(3) The amount to be paid to each operator of a curbside and neighborhood dropoff program shall be based upon the per-container rate, calculated pursuant to paragraph (2), multiplied by the curbside program's total reported beverage container volume during the fiscal year for which those payments are made.

(b) The amounts paid pursuant to this section shall be expended by operators of curbside and neighborhood dropoff programs only for activities related to beverage container recycling.

(c) The department shall disburse payments pursuant to this section not sooner than the 6th month of the fiscal year following the fiscal year for which the payments are being made, subject to the availability of funds.

(d) The operator of a curbside program or neighborhood dropoff program shall make available for inspection and review any relevant record that the department determines is necessary to verify compliance with this section.

SEC. 8. Section 14571.3 of the Public Resources Code is amended to read:

14571.3. (a) The department shall continuously assist any certified recycler to achieve greater service to the public in an economical and cost-effective manner. This assistance shall include, but not be limited to, advice on all of the following:

(1) Methods to enhance public participation in recycling.

(2) The most beneficial location, siting, and image of a recycling location.

(3) Methods to reduce costs and optimize efficiencies of existing resources.

(b) The department shall conduct regular, unannounced inspections of certified recycling centers for the purpose of determining that the requirements of this division are satisfied. The department shall assess civil penalties pursuant to Section 14591.1 for violations at certified recycling centers.

SEC. 9. Section 14588.1 of the Public Resources Code is amended to read:

14588.1. (a) As used in this chapter, ''unfair and predatory pricing'' means the payment to consumers by a supermarket site, that receives handling fees for the redemption of beverage containers, in an amount that exceeds the sum of both of the following:

(1) The California refund value for that container.

(2) (A) If the supermarket site is not located in a rural region, the average scrap value paid per pound for that container type by specified certified recycling centers located within a five-mile radius of the supermarket site on the date of the alleged occurrence, the day before the alleged occurrence, and the day after the alleged occurrence.

(B) If the supermarket site is located in a rural region, the average scrap value paid per pound for that container type by specified certified recycling centers located within a 10-mile radius of the supermarket site on the date of the alleged occurrence, the day before the alleged occurrence, and the day after the alleged occurrence.

(b) In calculating the three-day average price paid by recyclers within the specified distance of a recycler alleged to have engaged in predatory pricing, as required by subdivision (a), the department shall only survey those recyclers who did not receive handling fees in three or more of the 12 whole months immediately preceding the date of the allegation of predatory pricing.

(c) For purposes of this chapter, ''rural region'' means a nonurban area identified by the department on an annual basis using Farmers Home Loan Administration criteria. Those criteria include, but are not limited to, places, open country, cities, towns, or census designated places with populations that are less than 10,000 persons. The department may designate an area with population of between 10,000 and 50,000 persons as a rural region, unless the area is identified as part of, or associated with, an urban area, as determined by the department on an individual basis.

SEC. 10. Section 14588.2 of the Public Resources Code is amended to read:

14588.2. (a) To ensure that handling fees paid to a supermarket site are not used for the purpose of engaging in unfair and predatory pricing, and to otherwise further the intent of this chapter, the department shall follow all of the requirements of this section upon the complaint of either of the following:

(1) Any certified recycler located within five miles of the supermarket site alleged to have engaged in unfair and predatory pricing if not located in a rural region.

(2) Any certified recycler located within 10 miles of the supermarket site alleged to have engaged in unfair and predatory pricing if located in a rural region.

(b) (1) Within 50 days of receiving the complaint, the department shall complete an audit of the payments for the redemption of beverage containers being paid by the supermarket site, and by all other certified recycling centers as specified in Section 14588.1, for the purpose of determining whether the supermarket site is engaged in unfair and predatory pricing.

(2) The department shall withhold from public disclosure any proprietary information collected by the department in the course of the audit mandated by this paragraph. The department shall exercise its discretion in determining what information is proprietary.

(c) (1) If the director determines there is probable cause that a supermarket site, against which a complaint has been made, has engaged in unfair and predatory pricing, the director shall, within 60 days of receiving the complaint, convene an informal hearing before the director, or the director's designee.

(2) At least 10 days before the hearing, the director shall forward the results of the audit to the complainant and respondent.

(3) At the hearing, the director, or the director's designee, shall review the audit conducted pursuant to subdivision (b) and any evidence presented by the complainant that a supermarket site has engaged in unfair and predatory pricing. The director, or the director's designee, shall also review any evidence presented by the respondent that the respondent has not engaged in unfair and predatory pricing.

(4) The respondent shall be given the opportunity to rebut the presumption of unfair and predatory pricing imposed by Section 14588.1 by demonstrating to the satisfaction of the director, or the director's designee, that the respondent did both of the following:

(A) The respondent made a good faith effort to determine the average scrap value paid per pound for that container type by certified recycling centers located within a five-mile or 10-mile radius of the supermarket site, pursuant to subdivision (a) of Section 14588.1, within 30 days before the date of the alleged violation.

(B) The three-day average scrap value the respondent paid per pound for that container type was within 2.5 percent of the three-day average scrap value paid per pound determined by the department pursuant to subdivision (a).

(5) The director, or the director's designee, may dismiss a complaint made pursuant to subdivision (a) upon determining either of the following:

(A) The complaint is without basis.

(B) The complaint is repetitious of prior similar complaints against the same supermarket site for which the director or the director's designee has determined that no unfair and predatory pricing occurred.

(d) Within 20 days of the completion of the hearing, the director, or the director's designee, shall determine whether the supermarket site has engaged in unfair and predatory pricing. This determination shall be based upon the audit conducted pursuant to subdivision (b), and upon any clear and convincing evidence of unfair and predatory pricing presented at the hearing.

(e) During the time period from the date of the receipt of a complaint pursuant to subdivision (a), until the date the director makes a determination pursuant to subdivision (d), the supermarket site against which the allegation of unfair and predatory pricing is made shall not receive handling fees that were earned during the period commencing with the date of the alleged unfair and predatory pricing. However, nothing in this subdivision shall affect the payment of handling fees to a supermarket site that is found not to have engaged in unfair and predatory pricing pursuant to this section, or to the activities of a supermarket site prior to the date of the alleged unfair and predatory pricing.

(f) (1) If, after complying with the procedure established pursuant to this section, the director, or the director's designee, determines that a supermarket site has engaged in unfair and predatory pricing, the site is ineligible to receive handling fees as specified by this section.

(A) If the determination of unfair and predatory pricing is the first for the site, the site is ineligible to receive handling fees for six months from the date that the respondent is found to have engaged in unfair and predatory pricing.

(B) If the determination of unfair and predatory pricing is the second for the site, the site is ineligible to receive handling fees for one year from the date that the respondent is found to have engaged in unfair and predatory pricing.

(C) If the determination of unfair and predatory pricing is the third or more for the site, the site is ineligible to receive handling fees for five years after the date that the respondent is found to have engaged in unfair and predatory pricing.

(2) The penalties specified by this section shall be applied retroactively to all determinations of unfair and predatory pricing made by the director, or the director's designee, during the period from January 1, 2000, to January 1, 2002, inclusive.

(g) The complainant or respondent may obtain a review of the determination made pursuant to this section by filing in the superior court a petition for a writ of mandate within 30 days following the issuance of the determination. Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set forth in this subdivision, the determination made pursuant to this subdivision is not subject to review by any court or agency.

(h) If either party appeals the determination of the director, or the director's designee, pursuant to subdivision (g), and the department prevails, the department may recover any costs associated with its defense of the complaint.

SEC. 11. Section 14591.2 of the Public Resources Code is amended to read:

14591.2. (a) The department may take disciplinary action against any party responsible for directing, contributing to, participating in, or otherwise influencing the operations of, a certified or registered facility or program. A responsible party includes, but is not limited to, the certificate holder, registrant, officer, director, or managing employee. Except as otherwise provided in this division, the department shall provide a notice and hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code before taking any disciplinary action against a certificate holder.

(b) All of the following are grounds for disciplinary action, in the form determined by the department in accordance with subdivision (c):

(1) The responsible party engaged in fraud or deceit to obtain a certificate or registration.

(2) The responsible party engaged in dishonesty, incompetence, negligence, or fraud in performing the functions and duties of a certificate holder or registrant.

(3) The responsible party violated this division or any regulation adopted pursuant to this division, including, but not limited to, any requirements concerning auditing, reporting, standards of operation, or being open for business.

(4) The responsible party is convicted of any crime of moral turpitude or fraud, any crime involving dishonesty, or any crime substantially related to the qualifications, functions, or duties of a certificate holder.

(c) The department may take disciplinary action pursuant to this section, by taking any one of, or any combination of, the following:

(1) Immediate revocation of the certificate or registration, or revocation of a certificate or registration as of a specific date in the future.

(2) Immediate suspension of the certificate or registration for a specified period of time, or suspension of the certificate or registration

as of a specific date in the future. Notwithstanding subdivision (a), the department may impose a suspension of five days or less through an informal notice, if the action is subject to a stay on appeal, pending an informal hearing convened in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(3) Imposition on the certificate or registration of any condition that the department determines would further the goals of this division.

(4) Issuance of a probationary certificate or registration with conditions determined by the department.

(5) Collection of amounts in restitution of any money improperly paid to the certificate holder or registrant from the fund.

(6) Imposition of civil penalties pursuant to Section 14591.1.

(d) The department may do any of the following in taking disciplinary action pursuant to this section:

(1) If a certificate holder or registrant holds certificates or is registered to operate at more than one site or to operate in more than one capacity at one location, such as an entity certified as both a processor and a recycling center, the department may simultaneously revoke, suspend, or impose conditions upon some, or all of, the certificates held by the responsible party.

(2) If the responsible party is an officer, director, partner, manager, employee, or the owner of a controlling ownership interest of another certificate holder or registrant, that other operator's certificate or registration may also be revoked, suspended, or conditioned by the department in the same proceeding, if the other certificate holder or registrant is given notice of that proceeding, or in a subsequent proceeding.

(3) (A) If, pursuant to notice and a hearing conducted by the director or the director's designee in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, the department determines that the continued operation of a certified or registered entity poses an immediate and significant threat to the fund, the department may order the immediate suspension of the certificate holder or registrant, pending revocation of the certificate or registration, or the issuance of a probationary certificate imposing reasonable terms and conditions. The department shall record the testimony at the hearing and, upon request, prepare a transcript. For purposes of this section, an immediate and significant threat to the fund means any of the following:

(i) A loss to the fund of at least ten thousand dollars ($10,000) during the six-month period immediately preceding the order of suspension.

(ii) Missing or fraudulent records associated with a claim or claims totaling at least ten thousand dollars ($10,000) during the six-month period immediately preceding the order of suspension.

(iii) A pattern of deceit, fraud, or intentional misconduct in carrying out the duties and responsibilities of a certificate holder during the six-month period immediately preceding the order of suspension. For purposes of this section, a pattern of deceit, fraud, or intentional misconduct in carrying out the duties of a certificate holder includes, but is not limited to, the destruction or concealment of any records six months immediately preceding the order of suspension.

(iv) At least three claims submitted for ineligible material in violation of this division, including, but not limited to, a violation of Section 14595.5, during the six-month period immediately preceding the order of suspension.

(B) An order of suspension or probation may be issued to any or all certified or registered facilities or programs operated by a person or entity that the department determines to be culpable or responsible for the loss or conduct identified pursuant to subparagraph (A).

(C) The order of suspension or issuance of a probationary certificate imposing terms or conditions shall become effective upon written notice of the order to the certificate holder or registrant. Within 20 days after notice of the order of suspension, the department shall file an accusation seeking revocation of any or all certificates or registrations held by the certificate holder or registrant. The certificate holder or registrant may, upon receiving the notice of the order of suspension or probation, appeal the order by requesting a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. A request for a hearing or appeal from an order of the department does not stay the action of the department for which the notice of the order is given. The department may combine hearings to appeal an order of suspension and a hearing for the proposed revocation of a certificate or registration into one proceeding.

(D) Nothing in this section shall prohibit the department from immediately revoking a probationary certificate pursuant to subdivision (b) of Section 14541 or from taking other disciplinary action pursuant to Section 14591.2.

SEC. 12. Section 14591.6 of the Public Resources Code is amended to read:

14591.6. (a) When a person is engaged in recycling activity that violates this division, any regulation adopted pursuant to this division, or an order issued under this division, the department may issue an order to that person to cease and desist from that activity.

(b) If a request for a hearing is filed in writing within 10 days of the date of service of the order described in subdivision (a), a hearing shall

be held in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. The director or the director's designee shall determine whether to sustain or reverse the cease and desist order. If sustained, the order shall become effective and final upon the issuance and service of the order.

(c) If no written request for a hearing is filed within 10 days of the date of service of the order described in subdivision (a), or if a party requesting the hearing does not appear at the hearing, the order shall be deemed the final order of the department and is not subject to review by any court or agency. This order shall become effective and final after the expiration of the 10-day period within which a hearing may be requested.

(d) If a hearing is requested pursuant to subdivision (b) and the party requesting the hearing does not appear on the date scheduled, and fails to notify the department at least five days prior to the hearing date that the party will not appear, the department may recover from the party all costs and fees incurred by the department, including attorneys' and experts' fees, and any other costs associated with preparing for, or conducting, the hearing.

(e) Upon the failure of any person or persons to comply with any cease and desist order issued by the department, the Attorney General, upon request of the department, shall petition the superior court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining the person from continuing the activity in violation of the cease and desist order.

(f) The court shall issue an order directing defendants to appear before the court at a certain time and place and show cause why the injunction should not be issued. The court may grant the prohibitory or mandatory relief that may be warranted.

SEC. 13. Section 19524 of the Public Resources Code is repealed.

SEC. 14. The changes made to Sections 14588.1 and 14588.2 of the Public Resources Code by Sections 9 and 10 of this act shall apply retroactively to any complaint that was filed with the department before July 1, 2001, but was not decided before the effective date of these changes.

SEC. 15. Section 9 of Chapter 817 of the Statutes of 1999 is amended to read:

Sec. 9. The Department of Conservation, using funds from the California Beverage Container Recycling Fund, shall contract with the University of California for preparation and submittal to the department, on or before January 1, 2003, of a study that the department shall transmit to the Governor and the Legislature on or before that date, that does all of the following:

(a) Reviews whether the inclusion of plastic beverage containers made of resins other than polyethelene terathate has substantially increased the recycling rate of those containers.

(b) Compares the recycling rates for like types of beverage containers covered by the California Beverage Container Recycling and Litter Reduction Act with like types of beverage containers not covered by the act.

(c) Compares the net cost of recycling containers covered by the act at recycling centers, supermarket sites, and curbside recycling programs, and estimates the cost of collection and disposal of those containers not covered by the act and not recycled.

(d) Compares the economic benefit and impact on the state's economy of the act with an ''Oregon style'' nickel deposit law, and with the situation if the act were repealed.

(e) Reports the scope of curbside recycling in California, along with an evaluation of the benefits and cost impact of the act on curbside recycling programs.

(f) Recommends any modifications to the act, including, but not limited to, the fiscal and recycling impact of repealing the act; the fiscal and recycling impact of expanding the act; and any products or materials that should be included or excluded from the coverage of the act.

SEC. 16. 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. 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:

The Department of Conservation is in the process of implementing the predatory provisions of the California Beverage Container Recycling and Litter Reduction Act and has determined that there will be significant additional costs if this act is not enacted as soon as possible. Therefore, it is necessary that this act take effect immediately.

CHAPTER 875

An act to add Chapter 1.696 (commencing with Section 5096.600) to Division 5 of the Public Resources Code, relating to financing a program for the acquisition, development, restoration, protection, rehabilitation, stabilization, reconstruction, preservation, and interpretation of park, coastal, agricultural land, air, and historical resources in the state, by providing the funds necessary therefor through an election for, and the issuance and sale of, bonds of the State of California, and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Chapter 1.696 (commencing with Section 5096.600) is added to Division 5 of the Public Resources Code, to read:

## CHAPTER 1.696. THE CALIFORNIA CLEAN WATER, CLEAN AIR, SAFE NEIGHBORHOOD PARKS, AND COASTAL PROTECTION ACT OF 2002

### Article 1. General Provisions

5096.600. This chapter shall be known, and may be cited, as the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002.

5096.601. The Legislature finds and declares all of the following:

(a) To maintain a high quality of life for California's growing population requires a continuing investment in parks, recreation facilities, and in the protection of the state's natural and historical resources.

(b) Clean air, clean water, clean beaches, and healthy natural ecosystems that can support both human communities and the state's native fish and wildlife are all part of the legacy of California. Each generation has an obligation to be good stewards of these resources in order to pass them on to their children.

(c) California's historical legacy also requires active protection, restoration, and interpretation to preserve and pass on an understanding and appreciation of the diverse cultural influences and extraordinary human achievements that have contributed to the unique development of California.

5096.605. As used in this chapter, the following terms have the following meanings:

(a) ''Acquisition'' means obtaining the fee title or a lesser interest in real property, including specifically, a conservation easement or development rights.

(b) ''Department'' means the Department of Parks and Recreation.

(c) ''Development'' includes, but is not limited to, improvement, rehabilitation, restoration, enhancement, preservation, protection, and interpretation.

(d) ''Director'' means the Director of the Department of Parks and Recreation.

(e) ''District'' means any regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3, any recreation and park district formed pursuant to Chapter 4 (commencing with Section 5780), or an authority formed pursuant to Division 26 (commencing with Section 35100). With respect to any community or unincorporated region that is not included within a district, and in which no city or county provides parks or recreational areas or facilities, ''district'' also means any other district that is authorized by statute to operate and manage parks or recreational areas or facilities, employs a full-time park and recreation director, offers year-round park and recreation services on lands and facilities owned by the district, and allocates a substantial portion of its annual operating budget to parks or recreation areas or facilities.

(f) ''Fund'' means the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund created pursuant to Section 5096.610.

(g) ''Historical resource'' includes, but is not limited to, any building, structure, site, area, place, artifact, or collection of artifacts that is historically or archaeologically significant in the cultural annals of California.

(h) ''Local conservation corps'' means a program operated by a public agency or nonprofit organization that is certified pursuant to Section 14406.

(i) ''Nonprofit organization'' means any nonprofit public benefit corporation formed pursuant to the Nonprofit Corporation Law (commencing with Section 5000 of the Corporations Code), qualified to do business in California, and qualified under Section 501(c)(3) of the Internal Revenue Code.

(j) ''Preservation'' means identification, evaluation, recordation, documentation, interpretation, protection, rehabilitation, restoration, stabilization, development, and reconstruction, or any combination of those activities.

(k) ''Secretary'' means the Secretary of the Resources Agency.

5096.606. Lands or interests in land acquired with funds allocated pursuant to this chapter shall be acquired from a willing seller.

## Article 2. The California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002

5096.610. The proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund, which is hereby created. Except as provided in subdivision (a) of Section 5096.650, the money in the fund shall be available for appropriation by the Legislature, in the manner set forth in this chapter, for acquisition and development projects, in accordance with the following schedule:

(a) The sum of two hundred twenty-five million dollars ($225,000,000) for acquisition and development of the state park system.

(b) The sum of eight hundred thirty-two million five hundred thousand dollars ($832,500,000) for local assistance programs for the acquisition and development of neighborhood, community, and regional parks and recreation areas.

(c) The sum of one billion two hundred seventy-five million dollars ($1,275,000,000) for land, air, and water conservation programs, including acquisition for those purposes.

(d) The sum of two hundred sixty-seven million five hundred thousand dollars ($267,500,000) for the acquisition, restoration, preservation, and interpretation of California's historical and cultural resources.

## Article 3. State Parks

5096.615. The two hundred twenty-five million dollars ($225,000,000) allocated pursuant to subdivision (a) of Section 5096.610 shall be available for appropriation by the Legislature to the department for the acquisition and development of the state park system. It is the intent of the Legislature that first priority for funding shall be for development projects to complete and expand visitor facilities and for restoration projects. Not more than 50 percent of the funds provided by this section may be used for acquisition.

## Article 4. Local Assistance Programs

5096.620. The eight hundred thirty-two million five hundred thousand dollars ($832,500,000) allocated pursuant to subdivision (b) of Section 5096.610 shall be available for appropriation by the

Legislature for local assistance programs, in accordance with the following schedule:

(a) The sum of three hundred fifty million dollars ($350,000,000) to the department for grants, in accordance with Section 5096.621, and on the basis of population, for the acquisition and development of neighborhood, community, and regional parks and recreation lands and facilities in urban and rural areas.

(b) The sum of two hundred million dollars ($200,000,000) to the department for grants, in accordance with the Roberti-Z'berg-Harris Urban Open-Space and Recreation Program Act (Chapter 3.2 (commencing with Section 5620)).

(c) The sum of twenty-two million five hundred thousand dollars ($22,500,000) on a per capita basis in accordance with subdivision (g) of Section 5096.621.

(d) The sum of two hundred sixty million dollars ($260,000,000) to the department for grants for urban and special need park programs in accordance with Section 5096.625.

5096.621. (a) Sixty percent of the total funds available for grants pursuant to subdivision (a) of Section 5096.620 shall be allocated to cities and to districts other than a regional park district, regional park and open-space district, or regional open-space district. Each city's and district's allocation shall be in the same ratio as the city's or district's population is to the combined total of the state's population that is included in incorporated areas and unincorporated areas within the district, except that each city or district shall be entitled to a minimum allocation of two hundred twenty thousand dollars ($220,000). In any instance in which the boundary of a city overlaps the boundary of such a district, the population in the area of overlapping jurisdiction shall be attributed to each jurisdiction in proportion to the extent to which each operate and manage parks and recreational areas and facilities for that population. In any instance in which the boundary of a city overlaps the boundary of such a district, and in the area of overlap the city does not operate and manage parks and recreational areas and facilities, all grant funds shall be allocated to the district.

(b) Each city and each district subject to subdivision (a) whose boundaries overlap shall develop a specific plan for allocating the grant funds in accordance with the formula specified in subdivision (a). If, by April 1, 2003, the plan has not been agreed to by the city and district and submitted to the department, the director shall determine the allocation of the grant funds among the affected jurisdictions.

(c) Forty percent of the total funds available for grants pursuant to subdivision (a) of Section 5096.620 shall be allocated to counties and regional park districts, regional park and open-space districts, or

regional open-space districts formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3.

(d) Each county's allocation under subdivision (a) shall be in the same ratio as the county's population, except that each county shall be entitled to a minimum allocation of one million two hundred thousand dollars ($1,200,000).

(e) In any county that embraces all or part of the territory of a regional park district, regional park and open-space district, or regional open-space district, whose board of directors is not the county board of supervisors, the amount allocated to the county shall be apportioned between that district and the county in proportion to the population of the county that is included within the territory of the district and the population of the county that is outside the territory of the district.

(f) For the purpose of making the calculations required by this section, population shall be determined by the department, in cooperation with the Department of Finance, on the basis of the most recent verifiable census data and other verifiable population data that the department may require to be furnished by the applicant city, county, or district.

(g) Of the funds appropriated in subdivision (c) of Section 5096.620, twelve million five hundred thousand dollars ($12,500,000) shall be allocated to a city with an urban population greater than three million five hundred thousand in a county of the first class, and ten million dollars ($10,000,000) shall be allocated to a county of the first class.

(h) The Legislature finds and declares that it intends all recipients of funds pursuant to subdivision (a) of Section 5096.620 to use those funds to supplement local revenues, in existence on the effective date of the act adding this chapter during the 2001–02 Regular Session, that are being used for parks or other projects eligible for funds under this chapter. To receive any allocation pursuant to subdivision (a) of Section 5096.620, the recipient may not reduce the amount of funding otherwise available to be spent on parks or other projects eligible for funds under this chapter in their jurisdiction. One-time allocations that have been expended for parks or other projects, but which are not available on an ongoing basis, may not be considered when calculating a recipient's annual expenditures. For purposes of this subdivision, the Controller may request fiscal data from recipients for the preceding three fiscal years. Each recipient shall furnish the data to the Controller not later than 120 days after receiving the request from the Controller.

5096.624. (a) The director shall prepare and adopt criteria and procedures for evaluating applications for grants allocated pursuant to subdivisions (a) to (c), inclusive, of Section 5096.620. Individual applications for funds shall be submitted to the department for approval as to their conformity with the requirements of this chapter. The

application shall be accompanied by certification that the project for which the grant is requested is consistent with the park and recreation element of the applicable city or county general plan or the district park and recreation plan, as the case may be, and will satisfy a high priority need.

(b) To utilize available grant funds as effectively as possible, overlapping or adjoining jurisdictions and applicants with similar objectives are encouraged to combine projects and submit a joint application. An applicant may allocate all or a portion of its per capita share for a regional or state project.

(c) The director shall annually forward a statement of the total amount to be appropriated in each fiscal year for projects approved for grants pursuant to this article to the Director of Finance for inclusion in the Budget Bill. A list of eligible jurisdictions and the amount of grant funds to be allocated to each shall also be made available by the department.

(d) Funds appropriated pursuant to this article shall be encumbered by the recipient within three years from the date the appropriation is effective. Regardless of the date of encumbrance of the granted funds, the recipient is expected to complete all funded projects within eight years of the effective date of the appropriation.

5096.625. The funds provided in subdivision (d) of Section 5096.620 shall be available as grants for public agencies and nonprofit organizations for the acquisition and development of new parks, botanical gardens, nature centers, and other community facilities in park poor communities. The funds may be expended pursuant to Section 5004.5, and Chapter 1.55 (commencing with Section 5095), if Senate Bill 359 of the 2001–02 Regular Session of the Legislature is enacted on or before January 1, 2003, and Chapter 3.3 (commencing with Section 5640), if Assembly Bill 1481 of the 2001–02 Regular Session of the Legislature is enacted on or before January 1, 2003, or pursuant to any other applicable statutory authorization. Not less than fifty million dollars ($50,000,000) of the funds provided in subdivision (d) of Section 5096.620 shall be expended for competitive grants consistent with the requirements of subdivision (b) of Section 5096.348. Ten million dollars ($10,000,000) of the funds provided in subdivision (d) of Section 5096.620 shall be available for development of Central Park in the City of Rancho Cucamonga. Five million dollars ($5,000,000) of the funds provided in subdivision (d) of Section 5096.620 shall be available for allocation to the City of Los Angeles for park and recreation or community facilities at or adjacent to the Hansen Dam recreation area. Five million dollars ($5,000,000) of the funds provided in subdivision (d) of Section 5096.620 shall be available for allocation to the City of Los Angeles for the Sepulveda Basin recreational parkland.

5096.629. In making grants of funds allocated pursuant to subdivision (d) of Section 5096.620, priority shall be assigned to projects that include a commitment for a matching contribution. Contributions may be in the form of money from a nonstate source; gifts of real property, equipment, and consumable supplies; volunteer services; free or reduced-cost use.

5096.633. Any grant funds appropriated pursuant to this article that have not been expended by the grant recipient prior to July 1, 2011, shall revert to the fund and be available for appropriation by the Legislature for one or more of the local assistance programs specified in Section 5096.620 that the Legislature determines to be the highest priority statewide.

## Article 5. Land, Air, and Water Conservation

5096.650. The one billion two hundred seventy-five million dollars ($1,275,000,000) allocated pursuant to subdivision (c) of Section 5096.610 shall be available for the acquisition and development of land, air, and water resources in accordance with the following schedule:

(a) Notwithstanding Section 13340 of the Government Code, the sum of three hundred million dollars ($300,000,000) is continuously appropriated to the Wildlife Conservation Board for the acquisition, development, rehabilitation, restoration, and protection of habitat that promotes the recovery of threatened and endangered species, that provides corridors linking separate habitat areas to prevent habitat fragmentation, and that protects significant natural landscapes and ecosystems such as old growth redwoods and oak woodlands and other significant habitat areas; and for grants and related state administrative costs pursuant to the Wildlife Conservation Law of 1947 (Chapter 4 (commencing with Section 1300) of Division 2 of the Fish and Game Code). Funds scheduled in this subdivision may be used to prepare management plans for properties acquired in fee by the Wildlife Conservation Board.

(b) The sum of four hundred forty-five million dollars ($445,000,000) to the conservancies in accordance with the particular provisions of the statute creating each conservancy for the acquisition, development, rehabilitation, restoration, and protection of land and water resources; for grants and state administrative costs; and in accordance with the following schedule:

| | | |
|---|---|---|
| (1) | To the State Coastal Conservancy . . . . . | $200,000,000 |
| (2) | To the California Tahoe Conservancy . . . . . | $ 40,000,000 |
| (3) | To the Santa Monica Mountains Conservancy . . . . . | $ 40,000,000 |
| (4) | To the Coachella Valley Mountains Conservancy . . . | $ 20,000,000 |

| | | |
|---|---|---|
| (5) | To the San Joaquin River Conservancy ..... | $ 25,000,000 |
| (6) | To the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy ..... | $ 40,000,000 |
| (7) | To the Baldwin Hills Conservancy ..... | $ 40,000,000 |
| (8) | To the San Francisco Bay Area Conservancy Program ..... | $ 40,000,000 |

(c) The sum of three hundred seventy-five million dollars ($375,000,000) shall be available for grants to public agencies and nonprofit organizations for acquisition, development, restoration, and associated planning, permitting, and administrative costs for the protection and restoration of water resources in accordance with the following schedule:

(1) The sum of seventy-five million dollars ($75,000,000) to the secretary for the acquisition and development of river parkways and for protecting urban streams. The secretary shall make funds available in accordance with Sections 7048 and 78682.2 of the Water Code, and pursuant to any other applicable statutory authorization. Not less than five million dollars ($5,000,000) shall be available for grants for the urban streams program, pursuant to Section 7048 of the Water Code.

(2) The sum of three hundred million dollars ($300,000,000) shall be available for the purposes of clean beaches, watershed protection, and water quality projects to protect beaches, coastal waters, rivers, lakes, and streams from contaminants, pollution, and other environmental threats.

(d) The sum of fifty million dollars ($50,000,000) to the State Air Resources Board for grants to air districts pursuant to Chapter 9 (commencing with Section 44275) of Part 5 of Division 26 of the Health and Safety Code for projects that reduce air pollution that affects air quality in state and local park and recreation areas. Eligible projects shall meet the requirements of Section 16727 of the Government Code and shall be consistent with Section 43023.5 of the Health and Safety Code, if Assembly Bill 1390 of the 2001–02 Regular Session of the Legislature is enacted on or before January 1, 2003. Each district shall be eligible for grants of not less than two hundred thousand dollars ($200,000). Not more than 5 percent of the funds allocated to a district may be used to cover the costs associated with implementing the grant program.

(e) The sum of twenty million dollars ($20,000,000) to the California Conservation Corps for the acquisition, development, restoration, and rehabilitation of land and water resources, and for grants and state administrative costs in accordance with the following schedule:

(1) The sum of five million dollars ($5,000,000) shall be available for resource conservation activities.

(2) The sum of fifteen million dollars ($15,000,000) shall be available for grants to local conservation corps for acquisition and development of facilities to support local conservation corps programs.

(f) The sum of seventy-five million dollars ($75,000,000) shall be available for grants for the preservation of agricultural lands and grazing lands, including oak woodlands and grasslands.

(g) The sum of ten million dollars ($10,000,000) to the Department of Forestry and Fire Protection for grants for urban forestry programs pursuant to the California Urban Forestry Act of 1978 (Chapter 2 (commencing with Section 4799.06) of Part 2.5 of Division 1).

5096.651. In making grants pursuant to subdivisions (a) and (b) of Section 5096.650, priority shall be given to projects that include a commitment for a matching contribution. Contributions may be in the form of money, property, or services.

Article 5. Historical and Cultural Resources Preservation

5096.652. (a) The two hundred sixty-seven million five hundred thousand dollars ($267,500,000) allocated pursuant to subdivision (d) of Section 5096.610 shall be available for appropriation by the Legislature for the acquisition, development, preservation, and interpretation of buildings, structures, sites, places, and artifacts that preserve and demonstrate culturally significant aspects of California's history and for grants for these purposes. Eligible projects include, but are not limited to, those which preserve and demonstrate the following:

(1) Culturally significant aspects of life during various periods of California history including architecture, economic activities, art, recreation, and transportation.

(2) Unique identifiable ethnic and other communities that have added significant elements to California's culture.

(3) California industrial, commercial, and military history including the industries, technologies, and commercial activities that have characterized California's economic expansion and California's contribution to national defense.

(4) Important paleontologic, oceanographic, and geologic sites and specimens.

(b) Thirty-five million dollars ($35,000,000) of the funds available pursuant to this section shall be allocated to a city for the development, rehabilitation, preservation, restoration, and interpretation of resources at a city park of historical and cultural significance that is over 1,000 acres and that serves an urban area with a population that is greater than 750,000 in northern California.

(c) Two million five hundred thousand dollars ($2,500,000) of the funds available pursuant to this section shall be allocated to the County of Los Angeles for the El Pueblo Cultural and Performing Arts Center.

## Article 6. Fiscal Provisions

5096.665. Bonds in the total amount of two billion six hundred million dollars ($2,600,000,000), not including the amount of any refunding bonds issued in accordance with Section 5096.677, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes set forth in Section 5096.610 and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of the principal of, and interest on, the bonds as the principal and interest become due and payable. Pursuant to this section, the Treasurer shall sell the bonds authorized by the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act Finance Committee created pursuant to subdivision (a) of Section 5096.667 at any different times that are necessary to service expenditures appropriated pursuant to this chapter.

5096.666. The bonds authorized by this chapter shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law apply to the bonds and to this chapter and are hereby incorporated in this chapter by this reference as though set forth in full in this chapter.

5096.667. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this chapter, the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act Finance Committee is hereby created. For purposes of this chapter, the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act Finance Committee is ''the committee'' as that term is used in the State General Obligation Bond Law. The committee consists of the Controller, the Director of Finance, and the Treasurer, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the Secretary of the Resources Agency is designated the ''board.''

5096.668. The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this chapter

to carry out Section 5096.610 and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time.

5096.670. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds maturing each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

5096.671. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this chapter, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this chapter, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 5096.672, appropriated without regard to fiscal years.

5096.672. For purposes of carrying out this chapter, the Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts not to exceed the amount of the unsold bonds that have been authorized to be sold for the purpose of carrying out this chapter. Any amount withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund from proceeds received from the sale of bonds for the purpose of carrying out this chapter.

5096.673. Pursuant to Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code, the cost of bond issuance shall be paid out of the bond proceeds. These costs shall be shared proportionally by each program funded through this bond act.

5096.674. Actual costs incurred in connection with administering programs authorized under the categories specified in Section 5096.610 shall be paid from the funds authorized by this act.

5096.675. The secretary may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, including other authorized forms of interim financing that include, but are not limited to, commercial paper, in accordance with Section 16312 of the Government Code, for purposes of carrying out this chapter. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this chapter. The secretary shall execute any documents required by the Pooled Money Investment Board to obtain

and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this chapter.

5096.676. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

5096.677. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state of the issuance of the bonds described in this chapter includes the approval of the issuance of any bonds to refund any bonds originally issued under this chapter or any previously issued refunding bonds.

5096.678. Notwithstanding any provision of this chapter or the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this chapter that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

5096.679. (a) The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this chapter are not ''proceeds of taxes'' as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

(b) Funds provided pursuant to this chapter, and any appropriation or transfer of those funds, shall not be deemed to be a transfer of funds for the purposes of Chapter 9 (commencing with Section 2780) of Division 3 of the Fish and Game Code.

5096.681. Except for funds continuously appropriated by this chapter, all appropriations of funds pursuant to Section 5096.610 for purposes of the program shall be included in the Budget Bill for the 2002–03 fiscal year, and each succeeding fiscal year, for consideration by the Legislature, and shall bear the label ''California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Program Fund.'' The Budget Bill section shall contain separate items for each project, each class of project, or each element of the program for which an appropriation is made.

5096.683. The Secretary shall provide for an annual audit of expenditures from this chapter.

SEC. 2. Section 1 of this act shall take effect upon adoption by the voters of the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, as set forth in Section 1 of this act.

SEC. 3. (a) Notwithstanding the requirements of any other provision of law, the Secretary of State shall submit Section 1 of this act to the voters at the March 5, 2002, primary election.

(b) The Secretary of State shall ensure the placement of Section 1 of this act on the March 5, 2002, statewide ballot, in accordance with provisions of the Government Code and the Elections Code governing the submission of statewide measures to the voters.

(c) The Secretary of State shall include, in the ballot pamphlets mailed pursuant to Section 9094 of the Elections Code, the information specified in Section 9084 of the Elections Code regarding the bond act set forth in Section 1 of this act.

SEC. 4. (a) Notwithstanding any other provision of law, with respect to the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, all ballots of the election shall have printed thereon and in a square thereof, exclusively the words: ''The California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002'' and in the same square under those words, the following 8-point type: ''To protect rivers, lakes, and streams to improve water quality and ensure clean drinking water; to protect beaches and coastal areas threatened by pollution; to improve air quality; to preserve open space and farmland threatened by unplanned development; to protect wildlife habitat; to restore historical and cultural resources; to repair and improve the safety of state and neighborhood parks; the state shall issue bonds totaling two billion six hundred million dollars ($2,600,000,000) paid from existing funds. This program is subject to an annual independent audit. (At this point the Attorney General may include the financial impact summary prepared pursuant to Section 9087 of the Elections Code and Section 88003 of the Government Code.)'' Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

(b) Where the voting in the election is done by means of voting machines used pursuant to law in a manner that carries out the intent of this section, the use of the voting machines and the expression of the voter's choice by means thereof are in compliance with this section.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

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

In order that the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, set forth in Section 1 of this act, may be submitted for voter approval at the earliest feasible time, it is necessary that this act take effect immediately.

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## CHAPTER 876

An act to add Chapter 3.3 (commencing with Section 5640) to Division 5 of the Public Resources Code, relating to parks and recreation.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Chapter 3.3 (commencing with Section 5640) is added to Division 5 of the Public Resources Code, to read:

### CHAPTER 3.3. THE URBAN PARK ACT OF 2001

5640. This chapter shall be known, and may be cited, as the Urban Park Act of 2001 or the Urban Parks Initiative.

5641. The Legislature hereby finds and declares as follows:

(a) The program created by this chapter will finance the acquisition and development of parks and recreation areas and facilities in the neighborhoods that are currently least served by park and recreation providers. These neighborhoods are often the same areas that suffer most from high unemployment and destructive or unlawful conduct by youth.

(b) The program established by the chapter will encourage community participation in, and a greater sense of responsibility toward, new parks and recreation areas and facilities, which will help keep them clean and safe and which will enhance community pride and sustain neighborhood vitality.

(c) New parks and facilities will provide safe recreational opportunities for children and positive outlets for youth, and will meet the special recreational and social needs of senior citizens and other urban population groups.

5642. As used in this article, the following terms shall have the following meanings:

(a) ''City'' means a city or a city and county.

(b) ''District'' means a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3, or a recreation and park district formed pursuant to Chapter 4 (commencing with Section 5780).

(c) ''Facilities'' includes, but is not limited to, places for organized team sports, outdoor recreation, and informal turf play; nonmotorized recreational trails; permanent play structures; landscaping; places for passive recreation, enjoyment of scenic open space, nature appreciation and study, and outdoor education; multipurpose structures designed to meet the special recreational, educational, vocational, and social needs of youth, senior citizens, and other urban population groups; and infrastructure and other improvements that support these facilities.

(d) ''Heavily urbanized county'' means a county with a population of 500,000 or more, and a density of at least 1,100 persons per square mile, based on the most recent verifiable census data.

(e) ''Nonprofit organization'' means any nonprofit public benefit corporation formed pursuant to the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of the Corporations Code), qualified to do business in California, qualified under Section 501(c)(3) of Title 26 of the United States Code, and that has among its primary purposes the preservation, protection, or enhancement of land or water resources in their natural, scenic, historical, agricultural, forested, or open space condition or use, or the provision of conservation and environmental education and other recreational, vocational, and educational services to urban youth.

5643. The Department of Parks and Recreation shall establish a local assistance program to offer grants, on a competitive basis, to eligible cities, counties, joint powers authorities, any district except a school district authorized to provide park, recreational, or open-space services, or a combination of those services, and nonprofit organizations for the acquisition or development, or both, of property for urban parks and recreation areas and facilities.

5644. The following entities are eligible to apply for grants pursuant to this chapter:

(a) A heavily urbanized county.

(b) Any city or district, or joint powers authority that includes a city or district, irrespective of population, in a heavily urbanized county.

(c) Any city with a population of 100,000 or more, based on the most recent verifiable census data, which is not in a heavily urbanized county.

(d) A nonprofit organization that is applying for a grant for a project located within the jurisdiction of an entity that meets the requirements of subdivision (a), (b), or (c).

5645. The department may award a grant pursuant to this chapter only for a project that meets all of the following requirements:

(a) The proposed project is within the jurisdiction of an eligible applicant, as specified in Section 5644.

(b) The project will result in the creation of a new urban park or new recreational or multipurpose facility.

5646. In evaluating applications for grants that meet the requirements of Section 5645, the department shall assign higher priority to applications, for each of the following criteria satisfied:

(a) The amount of the grant applied for, together with any matching contribution, will meet all the costs of acquiring or developing, or both, the new urban park or facilities, and when construction of the project is completed, the new urban park or facility will be fully usable by the residents of the project's service area.

(b) The project's service area has significant deficiencies in parks and facilities relative to other areas of the applicant's jurisdiction.

(c) The project will enhance employment opportunities for residents, including at-risk youth, of the project's service area, or of members of the California Conservation Corps or certified local conservation corps.

(d) The project will accommodate outdoor learning opportunities for school pupils or at-risk youth from the project's service area, or of members of the California Conservation Corps or certified conservation corps.

(e) The project will be usable by pupils from one or more public schools in the project's service area.

(f) The application includes a commitment for a matching contribution. The matching contributions may be in the form of money from any source, including funds from other state local assistance programs; gifts of real property, equipment, and consumable supplies; volunteer services; free or reduced-cost use of land, facilities, or equipment; and bequests and income from wills, estates, and trusts. The department shall evaluate the amount of the matching contribution in terms of its proportionality in relation to the economic resources of the applicant.

(g) The project will wholly or partly replace an area of blight, or will contribute significantly to the economic revitalization of the area in the project's service area.

(h) The development phase of the project was planned with public input from the affected community.

(i) The project is a joint-use project between two or more agencies that share responsibility for ownership, development, and maintenance of the project.

5647. (a) The department may adopt guidelines to amplify or clarify the criteria specified in Section 5646, and may adopt additional

criteria, to supplement those criteria, but the scope of the additional criteria shall be limited to providing additional guidance in selecting projects in areas that have the greatest deficiencies in parks and facilities.

(b) The department may develop a procedural guide for the administration of this chapter and the guidance of applicants.

(c) The department shall solicit written comments and hold public hearings at convenient locations throughout the state on any guideline or procedural guide that is proposed to be adopted or developed pursuant to this section.

(d) If the department determines to adopt guidelines or to develop a procedural guide pursuant to this section, the department shall adopt the guidelines or develop the procedural guide on or before April 1, 2002.

(e) Any regulation or procedural guide adopted or developed pursuant to this section shall not be subject to the review or approval of the Office of Administrative Law or to any other requirement of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(f) The department may not expend more than 5 percent of the amount annually appropriated for the purposes of this chapter for administrative costs.

5648. (a) The local assistance program created by this chapter is intended to include grants for the acquisition or development, or both, of parcels of property of any size that will serve urban residents and otherwise meet the requirements of this chapter. The department shall not assign an application a lower priority on the basis that the application proposes the acquisition of a city lot or other small parcel.

(b) A grant may be expended to acquire the fee title, a leasehold, or other interest in real property. If an application proposes to acquire less than fee title, the applicant shall demonstrate in the application, to the satisfaction of the department, that the proposed project will provide public benefits that are commensurate with the type and duration of the interest in real property to be acquired.

5649. Any eligible nonprofit organization may apply for a grant on its own behalf or on behalf of an eligible city, county, or district pursuant to a contract with that city, county, or district to acquire and develop the urban park or recreation area. The application shall include a copy of the contract and the resolution or other authorization for the contract. The contract shall specify arrangements for the long-term management and operation of the urban park or recreation area.

5650. (a) Every applicant for a grant pursuant to this chapter and the entity that will operate and maintain the property, if that entity is different than the applicant, shall agree to comply with all of the following requirements:

(1) To operate and maintain the property developed pursuant to this chapter so that it is usable by residents of the project's service area. With the approval of the department, the grant recipient, or its successor in interest in the property, may transfer its property interest and the responsibility to operate and maintain the property, in accordance with the terms of the grant and any applicable law, to a public agency or nonprofit organization that is able to operate and maintain the property in perpetuity. Any attempt to make a transfer in violation of this subdivision is void.

(2) To use the property only for the purposes for which the grant was made and to make no other use or sale or other disposition of the property, except as authorized by specific act of the Legislature. If the use of the property is changed to a use that is not permitted by the terms of the grant, or if the property is sold or otherwise disposed of, the grant recipient shall reimburse the state an amount equal to the amount of the grant, the fair market value of the land and any improvements constructed with the grant, or the proceeds from the sale or other disposition, whichever amount is greatest. If the property that is sold or otherwise disposed of is less than the entire interest in the property funded with the grant, the grant recipient shall reimburse the state an amount equal to either the proceeds from the sale or other disposition of the interest or the fair market value of the interest sold or otherwise disposed of, whichever amount is greater.

(b) In lieu of seeking reimbursement pursuant to paragraph (2) of subdivision (a), the department may impose restrictions on the use of public park property identical to the requirements for the preservation of public parks set forth in the Public Park Preservation Act of 1971 (Chapter 2.5 (commencing with Section 5400)) with respect to any property used, sold, or otherwise disposed of in a manner not permitted by the terms of the grant.

5651. The recipient of a grant pursuant to this chapter may use the grant funds to pay for any portion of the cost of cleaning up, removing, or remediating any toxic materials or hazardous substances, if the amount used for cleanup, removal, or remediation does not exceed the lesser of 20 percent of the grant allocated to the project or one hundred thousand dollars ($100,000).

5652. A grant recipient shall encumber grant moneys within three years of the date of the approval of the grant.

5653. On or before April 30, 2003, and on or before April 30 annually thereafter, the department shall submit a report to the Legislature on the status of each grant made pursuant to this chapter.

5654. The provisions of this chapter shall be implemented only in a fiscal year for which funding is provided for that purpose in the annual Budget Act.

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## CHAPTER 877

An act to add Section 5004.5 and Chapter 1.55 (commencing with Section 5095) to Division 5 of the Public Resources Code, relating to parks and recreation.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

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

(a) Urban recreation and sports programs are a proven, common sense, and cost-effective means of preventing crime and delinquency. Investment in recreation is not a luxury, but rather is an investment in our security and health, and in the stability of our cities.

(b) Recreation, team sports, and games build self-esteem, confidence, social harmony, independent thinking, self-discipline, good manners, health, and skills in conflict resolution.

(c) Demand for recreation and the need for accessible, well-maintained, and lighted places to recreate far exceed the available supply of recreational facilities.

(d) It is cost-effective to invest in recreational rather than in incarceration facilities. The cost of keeping one teenager in detention for one year approaches thirty thousand dollars ($30,000).

(e) Urban recreation programs have a proven track record of reducing juvenile crime by more than 50 percent in some cities and by 90 percent in other major cities.

(f) Many of our cities suffer from a severe shortage of accessible recreation areas; a problem that is particularly acute in low-income and underserved communities.

SEC. 2. Section 5004.5 is added to the Public Resources Code, to read:

5004.5. (a) The California Youth Soccer and Recreation Development Program is hereby created in the department. The department shall administer the program, which is intended to provide assistance to local agencies and community-based organizations with regard to funding, and fostering the development of, new youth soccer, baseball, and basketball recreation opportunities in the state.

(b) The department shall report to the Assembly Committee on Budget and the Senate Committee on Budget and Fiscal Review on the need for soccer and baseball fields and basketball courts in the state, and the need for lighting, maintenance, and capital improvements to develop and improve existing recreational areas, with special emphasis on the development of soccer, baseball, and basketball facilities. The department shall coordinate with local agencies and community-based organizations to identify those areas in the state where there is a shortage of appropriate recreational facilities, particularly in heavily populated, urban, low-income, and crime ridden areas.

(c) The California Youth Soccer and Recreation Development Fund is hereby created in the State Treasury, to be used as a repository of funds derived from federal, state, and private sources to be used for the program.

(d) The department shall award grants, on a competitive basis, to local agencies and community-based organizations for the purposes of the program, subject to an appropriation therefor. The department shall also develop eligibility guidelines for the award of grants that give preference to those communities that provide matching funds for grants, and that are heavily populated, low-income urban areas with a high youth crime and unemployment rate. The guidelines shall also require that preference be given to those inner city properties that may be leased for periods of at least five years or more for recreational purposes. The department shall conduct public hearings throughout the state prior to final adoption of eligibility guidelines.

(e) For purposes of this section, the following terms have the following meanings:

(1) ''Community-based organization'' means an organization that enters into a cooperative agreement with the department pursuant to Section 513, a nonprofit group or organization, or a friends of parks group or organization of a city, county, city and county, and regional park.

(2) ''Local agency'' means a city, county, city and county, park and recreation district, open-space district, or school district.

SEC. 3. Chapter 1.55 (commencing with Section 5095) is added to Division 5 of the Public Resources Code, to read:

## CHAPTER 1.55. STATE URBAN PARKS AND HEALTHY COMMUNITIES ACT

5095. This chapter shall be known, and may be cited, as the State Urban Parks and Healthy Communities Act.

5095.1. The Legislature finds and declares all of the following:

(a) Parks and recreation provide opportunities for building strong communities and promote ethnic and cultural harmony.

(b) The state parks system and the network of community and regional parks, along with park professionals, are in a unique position to promote educational, recreational, and community services that foster partnerships with schools, nonprofit organizations, and other government organizations that serve as a foundation for the healthy development of our communities.

(c) California's population is growing increasingly diverse and it is incumbent upon state and local governments, working with local education entities, to develop and integrate programs and educational curriculum that take full advantage of the state's natural environs.

(d) Today, many of our communities are in distress and face increasingly complex problems of poverty, race relations, environmental concerns, crime, and inadequate education facilities. These problems are exacerbated by the lack of communication, collaboration, and services in our inner cities. More and more local agencies, along with nonprofit community-based organizations, are called upon to provide recreation, after school programs, and community services to meet these growing problems.

(e) Most state, community, and regional parks play a role in educating the public about our cultural diversity, historical roots, biological networks, and ecological systems. To do this effectively, these entities need to identify and integrate themes within our state and local parks systems that are relevant to urban communities and, to the extent possible, work with local education agencies to better define those themes and provide increased opportunities for children to access California's park network as a ''living classroom.''

(f) There are numerous examples across the state where collaborative efforts on behalf of state, community, and regional parks working in conjunction with community-based organizations and local education entities have developed programs, providing children with exemplary outdoor educational experiences.

(g) Often, inner city and minority youth populations lack access to recreational opportunities.

(h) Recreational and athletic activities have served to break down color barriers in various communities and allowed individuals such as Tiger Woods and Venus Williams to blaze new cultural and societal trails, serving as positive role models for urbanized youth throughout the nation.

(i) In addition, many urban areas throughout the state lack the financial means or availability of property to acquire and develop parks and recreation areas and facilities, particularly in the neighborhoods that are currently least served in this area.

(j) To promote a greater sense of responsibility toward new parks and recreation areas and facilities, it is vital to encourage community participation in the development of new parks and recreation areas and facilities, which will help keep them clean and safe and enhance community pride and sustain neighborhood vitality.

(k) Recreation, team sports, and games build self-esteem, confidence, social harmony, independent thinking, self-discipline, sportsmanship, and health and help to develop skills in conflict resolution.

5095.2. As used in this chapter, the following terms have the following meanings:

(a) ''Active recreational purpose'' means an activity that requires athletic fields, courts, gymnasiums, or other recreational venues for youth soccer, baseball, football, basketball, tennis, or swimming, or any activity the department identifies as meeting this definition.

(b) ''Department'' means the Department of Parks and Recreation.

(c) ''Director'' means the Director of Parks and Recreation.

(d) ''Facility'' includes a place for organized team sports, outdoor recreation, permanent play structures, and multipurpose structures designed to meet the special recreational, educational, vocational, and social needs of youth. ''Facility'' also includes the acquisition of properties or development of venues for the furtherance of the purposes of Section 5095.4 where existing state conservancies or state, community or regional parks are not readily accessible.

(e) ''Fund'' means the State Urban Parks and Health Communities Fund.

(f) ''Nonurbanized local agency'' means any city, county, or district that qualifies as a nonurbanized area as defined in subdivision (e) of Section 5621 and that is eligible for grant funding pursuant to Chapter 3.2 (commencing with Section 5620).

(g) ''Special district'' means a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3, or a recreation and park district formed pursuant to Chapter 4 (commencing with Section 5780).

(h) ''State agency'' includes the Department of Parks and Recreation and the state conservancies in existence on the effective date of the act adding this section during the 2001 portion of the 2001–02 Regular Session.

(i) ''Urbanized or heavily urbanized local agencies'' include cities, counties, or a city and county, or special districts as determined by the Department of Finance according to the latest verifiable census data pursuant to subdivisions (c) and (d) of Section 5621.

5095.3. There is hereby created, in the State Treasury, the State Urban Parks and Healthy Communities Fund. The department shall expend moneys from this fund, upon appropriation by the Legislature, to provide grants to state agencies, including state conservancies in existence on the effective date of the act adding this section during the 2001 portion of the 2001–02 Regular Session, urbanized or heavily urbanized local agencies, and community-based organizations, in accordance with Sections 5095.4 and 5095.5. The department may not expend more than 2.5 percent of the moneys in the fund to administer this chapter.

5095.4. (a) The director, in consultation with the State Department of Education, shall develop guidelines for curriculum for outdoor education using state conservancy properties in existence on the effective date of the act adding this section during the 2001 portion of the 2001–02 Regular Session, and state, community, and regional park units, and identify regions of the state where schoolage children lack adequate opportunities to access educational opportunities. The curriculum components may include, but not be limited to including, tapping California's vast resource areas for instruction of earth sciences, life sciences, geology, climate, history, social sciences, visual arts, performing arts, and culture. To accomplish this goal, the department shall create a competitive grant program to assist state parks, state conservancies in existence on the effective date of the act adding this section during the 2001 portion of the 2001–02 Regular Session, and urbanized and heavily urbanized local agencies and community-based organizations within those jurisdictions, working in collaboration to provide outdoor educational opportunities to children.

(1) Applicant entities shall provide a 25 percent matching contribution in community resources. The matching contributions may be in the form of money, including funds from other state or local assistance programs, gifts of real property, equipment, and consumable supplies, volunteer services, free or reduced-cost use of land, facilities, or equipment, and bequests and income from wills, estates, and trusts. The department shall evaluate the amount of the matching contribution in terms of its proportionality in relation to the economic resources of the applicant. The department may establish findings for hardships to waive the matching requirement when an applicant cannot meet the requirement.

(2) The department may give additional consideration to applicant entities collaborating with other entities, such as school districts, faith-based groups and others providing outreach programs to identify and attract urbanized youth most in need of organized, constructive recreational activities.

(b) The department shall make one-third of any funds appropriated for the purposes of this chapter available to give special priority to providing increased access for elementary schoolage children in grades 2 to 8, inclusive, to conservancy or state, community, and regional park properties and, in addition, shall give priority, in awarding a grant pursuant to this section, to all of the following:

(1) Programs that use curriculum tied to the State Department of Education standards for environmental education content.

(2) Applicants that serve children with family incomes below the statewide average, based on the most recent figures computed and established by the Department of Finance.

(3) Applicants that provide access to children who are underserved or lack access to parks or other outdoor venues suitable to conduct appropriate environmental education instruction.

(4) Applicants that have developed working collaboratives to develop environmental education partnerships.

(5) Applicants working in collaboration with local educational agencies to identify those children lacking adequate opportunities to access outdoor environmental education curriculum or innovative or alternative recreation programming.

(c) The amount of a grant awarded pursuant to this section may not be less than twenty thousand dollars ($20,000) or more than two hundred thousand dollars ($200,000). A grant may be expended for any of the following purposes:

(1) Staffing that is directly associated with the programming.

(2) Staff training or development directly associated with the programming.

(3) Costs associated with transporting youth between a community or school and the proposed environmental education venue.

(4) Medical insurance for the participants, only if the insurance is a requirement pursuant to the activity.

(5) Operational costs, such as the rental equipment, food, and supplies.

(6) Applicants that can demonstrate that the administrative costs associated with this activity will not exceed more than 7.5 percent of the amount of the grant.

(d) The department may gather information from the applicants as to the effectiveness of these programs in meeting program objectives. The department shall summarize this information and report to the appropriate budget and fiscal committees of both houses of the Legislature as to the number of children served, the educational objectives met, and the level of demand.

(e) Applicant agencies may enter into contracts with other public agencies or entities to provide unique interpretive skills or to present

authentic, curriculum-based programs in units of conservancy properties or state, community, or regional park systems for services not otherwise provided. The purpose of this subdivision is to authorize the applicants to provide programming services, equipment, and materials that assist in the curriculum program or provide educational activities that assist in the presentation of cultural traditions.

5095.5. (a) The department shall allocate two-thirds of any funds appropriated for the purposes of this chapter to provide grants to urbanized or heavily urbanized local agencies or community-based organizations within these jurisdictions for the acquisition and development of properties for active recreational purposes, as defined. Eligible projects shall meet all of the following criteria:

(1) The amount of the grant applied for, together with any matching contribution, shall meet all of the cost of acquiring and developing the project, and when construction of the project is completed, the new urban park or facility shall have a management plan and demonstrate to the satisfaction of the department that the applicant agencies have sufficient means to ensure that the park or facility shall remain open and accessible to the public.

(2) The application includes a commitment for a matching contribution. The matching contributions may be in the form of money, including funds from other state or local assistance programs, gifts of real property, equipment, and consumable supplies, volunteer services, free or reduced-cost use of land, facilities, or equipment, and bequests and income from wills, estates, and trusts. The department shall evaluate the amount of the matching contribution in terms of its proportionality in relation to the economic resources of the applicant. The department may establish findings for hardships to waive the matching requirement when an applicant cannot meet the requirement.

(3) The department may give special consideration to projects that wholly or partly replace an area of blight, or contribute significantly to the economic revitalization to the immediate community.

(4) To the extent possible, the project is a joint-use project between two or more agencies that share responsibility for ownership, development, and maintenance of the project.

(b) The department shall adopt guidelines to amplify or clarify the criteria specified in Section 5095.4 or this section, and may adopt additional criteria, to supplement those criteria.

(c) The department may develop a procedural guide for the administration of this chapter and the guidance of applicants.

(d) The department shall solicit written comments and hold public hearings at convenient locations throughout the state on any regulations, guidelines, or the procedural guide proposed to be adopted or developed pursuant to this section.

(e) The department shall adopt guidelines to implement this chapter on or before June 1, 2002.

(f) Any regulation, guideline, or procedural guide adopted or developed pursuant to this section is not subject to the review or approval of the Office of Administrative Law or to any other requirement of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(g) A grant received pursuant to this section may be expended to acquire the fee title or other interest in real property. If an application proposes to acquire less than fee title, the applicant shall demonstrate in the application, to the satisfaction of the department, that the proposed project will provide public benefits that are commensurate with the type and duration of the interest in real property to be acquired.

(h) With the consent of an urbanized or heavily urbanized local agency, any eligible nonprofit organization may apply for a grant on behalf of an entity for the purposes of either Section 5095.4 or this section. The application shall include a copy of any contract between the local agency and the nonprofit organization and the resolution or other authorization of consent. The contract shall specify arrangements for the long-term management and operation of the urban park or recreation area.

(i) Every applicant for a grant pursuant to this section and the entity that will operate and maintain the property, if that entity is different than the applicant, shall agree to comply with all of the following requirements:

(1) To operate and maintain the property developed pursuant to this chapter so that it is usable by residents of the affected area. With the approval of the department, the grant recipient, or its successor in interest in the property, may transfer its property interest and the responsibility to operate and maintain the property, in accordance with the terms of the grant and any applicable law, to a public agency or nonprofit organization that is able to operate and maintain the property in perpetuity. Any attempt to make a transfer in violation of this subdivision is void.

(2) To use the property only for the purposes for which the grant was made and to make no other use or sale or other disposition of the property, except as authorized by statute. If the use of the property is changed to a use that is not permitted by the terms of the grant, or if the property is sold or otherwise disposed of, the grant recipient shall reimburse the department an amount equal to the amount of the grant, the fair market value of the land and any improvements constructed with the grant, or the proceeds from the sale or other disposition, whichever amount is greater. If the property that is sold or otherwise disposed of is less than the entire interest in the property funded with the grant, the

grant recipient shall reimburse the department an amount equal to either the proceeds from the sale or other disposition of the interest or the fair market value of the interest sold or otherwise disposed of, whichever amount is greater.

(3) In lieu of seeking reimbursement pursuant to paragraph (2), the department may impose restrictions on the use of public park property identical to the requirements for the preservation of public parks set forth in the Public Park Preservation Act of 1971 (Chapter 2.5 (commencing with Section 5400)) with respect to any property used, sold, or otherwise disposed of in a manner not permitted by the terms of the grant.

(j) The recipient of a grant pursuant to this chapter may use the grant funds to pay for any portion of the cost of cleaning up, removing, or remediating any toxic materials or hazardous substances, if the amount used for cleanup, removal, or remediation does not exceed 20 percent of the grant allocated to the project.

(k) A grant recipient shall encumber grant moneys within two years of the date of the approval of the grant.

(*l*) The amount allocated pursuant to this chapter shall be roughly divided 60 percent to the southern portion of the state (south of the Tehachapi Mountains) and 40 percent to the northern portion.

(m) Recognizing that some rural areas of the state have significant deficiencies of park facilities for active recreational purposes, the department shall consider allocating two hundred fifty thousand dollars ($250,000) pursuant to this section to nonurbanized local agencies. In awarding these grants, the department shall apply the same guidelines as those established for awarding a grant to a nonurbanized area pursuant to subdivision (e) of Section 5621.

(n) To qualify as an eligible program or project, a Member of the Legislature must first nominate the program or project, pursuant to Section 5095.4 and this section. If the department determines that the program or project is eligible, the department shall issue an application to the eligible agency. A Member of the Legislature may nominate any and all projects within his or her district.

SEC. 4. Any grants awarded pursuant to this act shall be contingent upon a future appropriation in the annual Budget Act.

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## CHAPTER 878

An act relating to parks and recreation, and making an appropriation therefor.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. If the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 (Ch. 1.696 (commencing with Sec. 5096.600), Div. 5, P.R.C.) is approved by the voters at the March 5, 2002, primary election, of the funds allocated pursuant to subdivision (d) of Section 5096.620 of the Public Resources Code, one hundred forty million dollars ($140,000,000) shall be expended for the purposes of Assembly Bill 1481 of the 2001–02 Regular Session, if that bill is enacted, and fifty million dollars ($50,000,000) shall be expended for the purposes of Senate Bill 359 of the 2001–02 Regular Session, if that bill is enacted.

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## CHAPTER 879

An act to add and repeal Chapter 1.73 (commencing with Section 5097.7) of Division 5 of the Public Resources Code, relating to historical resources, and making an appropriation therefor.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

I have signed SB 307 with a deletion of the $450,000 General Fund appropriations.

This bill would create the California Japantown Preservation Pilot Project, which would require the State Librarian to provide a one-time grant to the City of Los Angeles, the City of San Jose and the City and County of San Francisco to promote the preservation of these important neighborhoods.

Although I am deleting the appropriation, I am signing AB 1602 that, if enacted by the voters, will provide $267.5 million for cultural and historical preservation capital outlay projects. Additionally, I am directing the Department of Parks and Recreation to provide $150,000 from existing resources for the purposes of the bill until other appropriate sources of funding are available.

GRAY DAVIS, Governor

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

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

(a) California is distinguished as the most culturally and ethnically diverse state in the nation; yet, it is home to only a handful of remaining tangible treasures that reflect the history and traditions of our ethnic communities and towns. The history of those treasures is characterized by adversity, profound commitment, hard work, community initiative, triumphs, indomitable spirits, and hope for the future together with all-too-frequent destruction of their treasured places.

(b) Saving our ethnic communities is critical to our state and our nation. Not only are they sites of buildings, businesses and landmarks of historic and cultural significance, they are vital hubs that draw millions of people from all over the world who relate to and learn from their culture, history, food, and other elements of their heritage.

(c) Many of the few remaining communities are in critical danger of being lost to urban decay, neglected earthquake damage, encroaching economic forces and demographic shifts.

(d) For example, prior to World War II, more than 40 historical and geographic Japanese-American communities flourished throughout the United States. Sadly, today only three remain, all in California: San Francisco, San Jose, and Los Angeles.

(e) Each of these existing Japantowns, as well as several other communities reflecting different ethnic heritages, has already embarked on a community preservation and economic development planning process using existing resources. However, the complex dynamics of preserving historic structures, while simultaneously working to revitalize the surrounding area, require comprehensive, culturally sensitive and collaborative approaches that are currently beyond the scope and funding resources of existing state programs, local government agencies, and community-based programs.

(f) Those communities are often impeded in their efforts to seek additional resources because they are not necessarily a discreet, physically or geographically contained monument to a community's ethnic heritage, but rather are a diverse, unconnected assemblage of physical structures linked together by ethnic, cultural and historic bonds.

(g) The three remaining Japantowns in California face the immediate challenge of integrating development and urban renewal proposals that are not consistent with the cultural character of Japantown neighborhoods. While economic development within Japantown neighborhoods and communities is both welcomed and encouraged, that development should be guided by a comprehensive vision of the future with a commitment to the history and cultural character of the neighborhoods and communities. It is the intent of the Legislature in enacting Chapter 1.73 (commencing with Section 5097.7) of Division 5 of the Public Resources Code to assist cities and cities and counties in developing plans, or in implementing existing plans, for the preservation of Japantowns within their jurisdictions.

SEC. 2. Chapter 1.73 (commencing with Section 5097.7) is added to Division 5 of the Public Resources Code, to read:

## CHAPTER 1.73. CALIFORNIA JAPANTOWN PRESERVATION PILOT PROJECT

5097.7. (a) To implement the purposes of this chapter, the State Librarian shall provide a one-time grant in equal amounts to each of the following recipients:

(1) The City of Los Angeles.

(2) The City and County of San Francisco.

(3) The City of San Jose.

(b) Any city or city and county that receives a grant pursuant to this chapter shall utilize that grant money to aid in the preparation, adoption, or implementation of specific plans, in a manner that promotes the preservation of the existing Japantown neighborhoods in that jurisdiction. In addition to any public participation required under the current law, the city or city and county shall work, in consultation with a community organization designated by the legislative body of the city or city and county to develop a plan that is consistent with this section, or to implement an existing plan. A city or city and county that receives a grant pursuant to this chapter may utilize that grant money to aid in the implementation of an existing plan that promotes the preservation of a Japantown within its jurisdiction if that plan meets both of the following requirements:

(1) Was prepared with involvement from the Japantown stakeholders.

(2) Has been adopted by the city's or city and county's legislative body as consistent with its general plan.

(c) As used in this section, ''specific plan'' means a plan that is adopted by the legislative body of the city or city and county that meets the requirements of Article 8 (commencing with Section 65450) of Chapter 3 of Division 1 of Title 7 of the Government Code, or the corresponding provisions of any applicable municipal ordinance, rule, or regulation. Alternatively, any city or city and county that has adopted both a business district plan and a redevelopment plan that focuses exclusively on the revitalization of the Japantown area may, by resolution of its legislative body, designate those existing plans as its specific plan for the purposes of this chapter.

(d) As used in this section, ''community organization'' means any organization that is either of the following:

(1) A task force appointed by the legislative body of the city or city and county made up of representatives from the various groups of interested parties listed in paragraph (2).

(2) An organization that is registered with the Secretary of State as a California corporation whose objectives include the planning, preservation, and development of a Japantown in a city or city and

county identified in subdivision (a), and whose board of directors includes, but is not limited to, all of the following:

(A) Residents of the area identified as Japantown in the city or city and county receiving the grant.

(B) Business owners whose businesses are located in the area identified as Japantown in the city or city and county receiving the grant.

(C) Owners of property located in the area identified as Japantown in the city or city and county receiving the grant.

(D) Representatives of nonprofit organizations that serve the area identified as Japantown, or any other interested party from the city or city and county receiving the grant.

(e) During the preparation and adoption process of a specific plan described in this section, a city or city and county that receives a grant pursuant to this chapter shall, in consultation with an organization as defined in subdivision (d), review any proposed development within the area identified as Japantown and shall not approve the development unless the city or city and county makes findings and issues a written determination that the proposed development will not be inconsistent with, nor detrimental to, the proposed specific plan. The proposed development in the Japantown area shall be evaluated through the review process for all of the following:

(1) Its impact on the cultural and historical character of Japantown.

(2) Its impact on the current infrastructure of Japantown.

(3) Its ability to enhance the overall vitality of Japantown and address Japantown community's needs.

5097.71. (a) By December 30, 2004, the State Librarian shall provide a report to the Legislature regarding the accomplishments of the grant program established pursuant to this chapter.

(b) The report described in subdivision (a) may be utilized as a model for the creation of a permanent program within the Department of Parks and Recreation for the purpose of preserving and protecting other historic ethnic and culturally significant neighborhoods and communities.

5097.72. This chapter shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one

million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 4. The sum of four hundred fifty thousand dollars ($450,000) is hereby appropriated from the General Fund to the California Research Bureau of the California State Library, for allocation to the State Librarian, to be distributed as grants in equal amounts in accordance with Chapter 1.73 (commencing with Section 5097.7) of Division 5 of the Public Resources Code. Up to 5 percent of the funds appropriated may be used by the State Librarian for the administrative costs to implement that chapter and to prepare a report as described in Section 5097.71 of the Public Resources Code.

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## CHAPTER 880

An act to add Article 4.7 (commencing with Section 6072) to Chapter 4 of Division 3 of the Business and Professions Code, relating to attorneys.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 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 provision of pro bono legal services is the professional responsibility of California attorneys as an integral part of the privilege of practicing law in this state.

(b) Each year, thousands of Californians, particularly those of limited means, must rely on pro bono legal services in order to exercise their fundamental right of access to justice in California. Without access to pro bono services, many Californians would be precluded from pursuing important legal rights and protections.

(c) In recent years, many law firms in California have been fortunate to experience a robust increase in average attorney income. However, during the same time period, there has regrettably been a decline in the average number of pro bono services being rendered by attorneys in this state.

(d) Without legislative action to bolster pro bono activities, there is a serious risk that the provision of critical pro bono legal services will continue to substantially decrease.

SEC. 2. It is the intent of the Legislature to do the following:

(a) To reaffirm the importance and integral public function of California attorneys and law firms striving to provide reasonable levels of pro bono legal services to Californians who need those services.

(b) To strengthen the state's resolve to ensure that all Californians, especially those of limited means, have an effective means to exercise their fundamental right of access to the courts.

SEC. 3. Article 4.7 (commencing with Section 6072) is added to Chapter 4 of Division 3 of the Business and Professions Code, to read:

Article 4.7. Contracts For Legal Services

6072. (a) A contract with the state for legal services that exceeds fifty thousand dollars ($50,000) shall include a certification by the contracting law firm that the firm agrees to make a good faith effort to provide, during the duration of the contract, a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full-time attorneys in the firm's offices in the state, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10 percent of its contract with the state.

(b) Failure to make a good faith effort may be cause for nonrenewal of a state contract for legal services and may be taken into account when determining the award of future contracts with the state for legal services. If a firm fails to provide the hours of pro bono legal services set forth in its certification, the following factors shall be considered in determining whether the firm made a good faith effort:

(1) The actual number of hours of pro bono legal services provided by the firm during the term of the contract.

(2) The firm's efforts to obtain pro bono legal work from legal services programs, pro bono programs, and other relevant communities or groups.

(3) The firm's history of providing pro bono legal services, or other activities of the firm that evidence a good faith effort to provide pro bono legal services such as the adoption of a pro bono policy or the creation of a pro bono committee.

(4) The types of pro bono legal services provided, including the quantity and complexity of cases as well as the nature of the relief sought.

(5) The extent to which the failure to provide the hours of pro bono legal services set forth in the certification is the result of extenuating circumstances unforseen at the time of the certification.

(c) In awarding a contract with the state for legal services that exceeds fifty thousand dollars ($50,000), the awarding department shall consider the efforts of a potential contracting law firm to provide, during the

12-month period prior to award of the contract, the minimum number of hours of pro bono legal services described in subdivision (a). Other things being equal, the awarding department shall award a contract for legal services to firms that have provided, during the 12-month period prior to award of the contract, the minimum number of hours of pro bono legal services described in subdivision (a).

(d) As used in this section, ''pro bono legal services'' means the provision of legal services either:

(1) Without fee or expectation of fee to either:

(A) Persons who are indigent or of limited means.

(B) Charitable, religious, civic, community, governmental, and educational organizations in matters designed primarily to address the economic, health, and social needs of persons who are indigent or of limited means.

(2) At no fee or substantially reduced fee to groups or organizations seeking to secure or protect civil rights, civil liberties, or public rights.

(e) Nothing in this section shall subject a contracting law firm that fails to provide the minimum number of hours of pro bono legal services described in subdivision (a) to civil or criminal liability, nor shall that failure be grounds for invalidating an existing contract for legal services.

(f) This article shall not apply to state contracts with, or appointments made by the judiciary of, an attorney, law firm, or organization for the purposes of providing legal representation to low- or middle-income persons, in either civil, criminal, or administrative matters.

(g) This article shall not apply to contracts entered into between the state and an attorney or law firm if the legal services contracted for are to be performed outside the State of California.

(h) The provisions of this article shall become operative on January 1, 2003.

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## CHAPTER 881

An act to add Article 12 (commencing with Section 69740) to Chapter 2 of Part 42 of the Education Code, relating to higher education loan assistance.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. It is the intent of the Legislature to provide access to legal education and to meet the needs of the State of California in areas

of law related to the public interest. The Legislature finds that the high cost of attending law school requires that attorneys command high incomes to repay the financial obligations incurred in obtaining the required training and that, consequently, few attorneys are able to practice in areas of law relating to the public interest because the pay is substantially lower than the pay in other practice areas. The Legislature finds that encouraging outstanding law students and attorneys to practice in areas of the law related to the public interest is essential to ensuring access to legal services in those areas. Therefore, it is the intent of the Legislature in enacting this act to provide for the partial or full repayment of educational loans of attorneys who provide legal services in California in a public interest area of the law.

SEC. 2. Article 12 (commencing with Section 69740) is added to Chapter 2 of Part 42 of the Education Code, to read:

Article 12. Public Interest Attorney Loan Repayment Program

69740. Unless the context requires otherwise, the definitions in this section govern the construction of this article.

(a) ''Commission'' means the Student Aid Commission.

(b) ''Eligible education and training programs'' means education and training programs approved by the commission that lead to eligibility for a license to practice law as a licensed attorney.

(c) ''Eligible expenses'' means reasonable expenses associated with the costs of acquiring an education such as tuition, books, equipment, fees, room and board, and other expenses determined by the commission.

(d) ''Eligible participant'' means a licensed attorney who has been admitted to the program and is a resident of this state and who can provide proof of residency in this state.

(e) ''Licensed attorney'' means an attorney who resides in this state who has successfully passed the California bar examination and has been admitted to practice in this state or has otherwise been licensed to practice law in this state by the State Bar of California.

(f) ''Loan repayment'' means a loan that is paid in full or in part if the participant renders legal services in this state in a public interest area of the law.

(g) ''Participant'' means a licensed attorney who has been admitted to the program and has commenced practice as a licensed attorney in this state in a public interest area of the law.

(h) ''Program'' means the Public Interest Attorney Loan Repayment Program.

(i) ''Public interest area of the law'' means those areas of the law determined by the commission, in consultation with the advisory

committee, to serve the public interest, including, but not necessarily limited to, providing direct legal service at a local (1) legal services organization, (2) prosecuting attorney's office, (3) child support agency office, or (4) criminal public defender's office. For the purposes of this article, a ''legal services organization'' is a legal services provider in California that serves a clientele over 70 percent of whom are low-income persons according to applicable federal income guidelines.

(j) ''Required service obligation'' means an obligation by the participant to provide legal services in this state in a public interest area of the law as established pursuant to this article.

69741. The Public Interest Attorney Loan Repayment Program is established for licensed attorneys who practice or agree to practice in public interest areas of the law in this state. The program shall be administered by the commission.

69741.5. The commission is limited to making 3,000 awards of loan assumption annually. Participants are eligible for a maximum of eleven thousand dollars ($11,000) in loan assistance for four years, as follows:

(a) For the first year, two thousand dollars ($2,000) in loan repayment assistance.

(b) For the second, third, and fourth years, three thousand dollars ($3,000) in loan repayment assistance for each year.

69742. (a) The commission shall establish eligibility criteria for participation in the program based upon need and merit. These criteria shall be based on all of the following, which are set forth in order of importance:

(1) The applicant's need, which shall be based on the applicant's salary, personal resources, and law school debt.

(2) The applicant's commitment to public interest law, which shall be determined by examining the applicant's employment and volunteer history, and taking into consideration a low-income applicant's need to work while in law school.

(3) The applicant's declared interest in practicing in areas of the state where the need for public interest attorneys is high.

(4) The applicant's academic achievements.

(b) The commission shall adopt initial regulations for the program within one year of the effective date of the initial appropriation funding the program.

69743. The program is intended to supplement, and not to replace, existing loan repayment programs operated by law schools. Prior to participating in the program, an applicant shall apply for any educational loan assistance from his or her educational institution for which he or she may qualify. Only if an applicant has received no loan repayment assistance, or only partial assistance, from other available sources, may

he or she apply to the program for assistance in repaying the balance of his or her educational loans.

69743.5. The commission shall select, from the qualified applicants, the individuals who are eligible to participate in the program. After each year-long period of full-time, or full-time equivalent, employment in a public interest area of the law, the loan repayment of the eligible participant shall be made to the lender.

69744. The commission may use the funds appropriated for the program, including reasonable administrative costs, for the purposes of loan repayments. The commission shall annually establish the total amount of funding to be awarded for loan repayments. Allocation of funds shall be established based upon the best use of funding for that year, as determined by the commission.

69745. (a) Loans from both government sources and financial institutions may be repaid by the program. Each participant shall agree to allow the commission access to loan records and to acquire information from lenders necessary to verify eligibility and to determine payments. Loans may not be renegotiated with lenders to accelerate repayment.

(b) Payments shall be made annually to the lender until the loan is repaid, fulfilled, or until the required service obligation is fulfilled and eligibility discontinues, whichever comes first.

(c) If the participant discontinues practicing in a public interest area of the law, payments against the loans of the participant shall cease to be effective on the date that the participant discontinues service.

69746. The commission is not responsible for any outstanding payments on principal and interest to any lender once a participant's eligibility expires.

69747. (a) The Public Interest Attorney Loan Repayment Endowment Account is created in the State Treasury.

(b) The commission shall deposit in the account all money received for the program. The account shall be self-sustaining and consist of funds appropriated by the Legislature for the program and private contributions to the program.

(c) With the exception of the operating costs associated with the management of the account by the Treasurer, the account shall be credited with all investment income earned by the account.

69748. (a) The Treasurer may invest, reinvest, manage, contract, sell, or exchange money in the account. Except as provided in subdivision (d) of Section 69747, earnings from the investment of the money in the account shall be retained by the account.

(b) Money in the account may be spent only for the purposes of the program as specified in this article.

(c) The Treasurer shall routinely consult and communicate with the commission on the investment policy, earnings of the trust, and related needs of the program.

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## CHAPTER 882

An act to amend Sections 14836, 14837, 14838.5, 14839, 14839.1, 14840, 14842, and 14842.5 of, and to repeal and add Section 14838 of, the Government Code, and to amend Sections 2000 and 2001 of, and to add Sections 2002 and 10116 to, the Public Contract Code, relating to public contracts.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 14836 of the Government Code is amended to read:

14836. (a) The Legislature hereby declares that it serves a public purpose, and it is of benefit to the state, to promote and facilitate the fullest possible participation by all citizens in the affairs of the State of California in every possible way. It is also essential that opportunity is provided for full participation in our free enterprise system by small business enterprises.

(b) Further, it is the declared policy of the Legislature that the state should aid, counsel, assist, and protect, to the maximum extent possible, the interests of small business concerns, including microbusinesses, in order to preserve free competitive enterprise and to ensure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the state be placed with these enterprises.

SEC. 2. Section 14837 of the Government Code is amended to read:

14837. As used in this chapter:

(a) ''Department'' means the Department of General Services.

(b) ''Director'' means the Director of General Services.

(c) ''Manufacturer'' means a business that is both of the following:

(1) Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.

(2) Classified between Codes 2000 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(d) (1) ''Small business'' means an independently owned and operated business, which is not dominant in its field of operation, the

principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees.

(2) ''Microbusiness'' is a small business that, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars ($2,500,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 25 or fewer employees.

(3) The director shall conduct a biennial review of the average annual gross receipt levels specified in this subdivision and may adjust that level to reflect changes in the California Consumer Price Index for all items. To reflect unique variations or characteristics of different industries, the director may establish, to the extent necessary, either higher or lower qualifying standards than those specified in this subdivision, or alternative standards based on other applicable criteria.

(4) Standards applied under this subdivision shall be established by regulation, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1, and shall preclude the qualification of businesses that are dominant in their industry.

SEC. 3. Section 14838 of the Government Code is repealed.

SEC. 3.1. Section 14838 is added to the Government Code, to read:

14838. In order to facilitate the participation of small business, including microbusiness, in the provision of goods, information technology, and services to the state, and in the construction (including alteration, demolition, repair, or improvement) of state facilities, the directors of General Services and other state agencies that enter those contracts, each within their respective areas of responsibility, shall do all of the following:

(a) Establish goals, consistent with those established by the Office of Small Business Certification and Resources, for the extent of participation of small businesses, including microbusinesses, in the provision of goods, information technology, and services to the state, and in the construction of state facilities.

(b) Provide for small business preference, or nonsmall business preference for bidders that provide for small business and microbusiness subcontractor participation, in the award of contracts for goods, information technology, services, and construction, as follows:

(1) In solicitations where an award is to be made to the lowest responsible bidder meeting specifications, the preference to small business and microbusiness shall be 5 percent of the lowest responsible bidder meeting specifications. The preference to nonsmall business bidders that provide for small business or microbusiness subcontractor

participation shall be, up to a maximum of 5 percent of the lowest responsible bidder meeting specifications, determined according to rules and regulations established by the Department of General Services.

(2) In solicitations where an award is to be made to the highest scored bidder based on evaluation factors in addition to price, the preference to small business or microbusiness shall be 5 percent of the highest responsible bidder's total score. The preference to nonsmall business bidders that provide for small business or microbusiness subcontractor participation shall be up to a maximum 5 percent of the highest responsible bidder's total score, determined according to rules and regulations established by the Department of General Services.

(3) The preferences under paragraphs (1) and (2) may not be awarded to a noncompliant bidder and may not be used to achieve any applicable minimum requirements.

(4) The preference under paragraph (1) may not exceed fifty thousand dollars ($50,000) for any bid, and the combined cost of preferences granted pursuant to paragraph (1) and any other provision of law may not exceed one hundred thousand dollars ($100,000). In bids in which the state has reserved the right to make multiple awards, this fifty thousand dollar ($50,000) maximum preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of small businesses, including microbusiness, in the contract award.

(c) Give special consideration to small businesses and microbusinesses by both:

(1) Reducing the experience required.

(2) Reducing the level of inventory normally required.

(d) Give special assistance to small businesses and microbusinesses in the preparation and submission of the information requested in Section 14310.

(e) Under the authorization granted in Section 10163 of the Public Contract Code, make awards, whenever feasible, to small business and microbusiness bidders for each project bid upon within their prequalification rating. This may be accomplished by dividing major projects into subprojects so as to allow a small business or microbusiness contractor to qualify to bid on these subprojects.

(f) Small business and microbusiness bidders qualified in accordance with the provisions of this chapter shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible under this provision or any other provision of law shall not result in the denial of the award to a small business or microbusiness bidder. In the event of a precise tie between the low responsible bid of a bidder meeting specifications of a small business or microbusiness, and the low responsible bid of a bidder meeting the specifications of a disabled veteran-owned small business

or microbusiness, the contract shall be awarded to the disabled veteran-owned small business or microbusiness. This provision applies if the small business or microbusiness bidder is the lowest responsible bidder, as well as if the small business or microbusiness bidder is eligible for award as the result of application of the small business and microbusiness bidder preference granted by subdivision (b).

SEC. 4. Section 14838.5 of the Government Code is amended to read:

14838.5. (a) Notwithstanding the advertising, bidding, and protest provisions of Chapter 6 (commencing with Section 14825) of this code and Chapter 2 (commencing with Section 10290) and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for the acquisition of goods, services, or information technology that has an estimated value of greater than five thousand dollars ($5,000), but less than two hundred thousand dollars ($200,000) for construction contracts and less than one hundred thousand dollars ($100,000) for all other contracts, to a certified small business, including a microbusiness, or to a disabled veteran business enterprise, as long as the agency obtains price quotations from two or more certified small businesses, including microbusinesses, or from disabled veterans business enterprises.

(b) In carrying out subdivision (a), state agencies shall consider a responsive offer timely received from a responsible certified small business, including a microbusiness, or from a disabled veteran business enterprise.

(c) If the estimated cost to the state is less than five thousand dollars ($5,000) for the acquisition of goods, services, or information technology, or a greater amount as administratively established by the director, a state agency shall obtain at least two price quotations from responsible suppliers whenever there is reason to believe a response from a single source is not a fair and reasonable price.

SEC. 5. Section 14839 of the Government Code is amended to read:

14839. There is hereby established within the department the Office of Small Business Certification and Resources. The duties of the office shall include:

(a) Compiling and maintaining a comprehensive bidders list of qualified small businesses, and noting which small businesses also qualify as microbusinesses.

(b) Coordinating with the Federal Small Business Administration, the Minority Business Development Agency, and the Office of Small Business Development of the Department of Economic and Business Development.

(c) Providing technical and managerial aids to small businesses and microbusinesses by conducting workshops on matters in connection with government procurement and contracting.

(d) Assisting small businesses and microbusinesses in complying with the procedures for bidding on state contracts.

(e) Working with appropriate state, federal, local, and private organizations and business enterprises in disseminating information on bidding procedures and opportunities available to small businesses and microbusinesses.

(f) Making recommendations to the department and other state agencies for simplification of specifications and terms in order to increase the opportunities for small business and microbusiness participation.

(g) Develop, by regulation, other programs and practices that are reasonably necessary to aid and protect the interest of small businesses and microbusinesses in contracting with the state.

(h) The information furnished by each contractor requesting a small business or microbusiness preference shall be under penalty of perjury.

SEC. 6. Section 14839.1 of the Government Code is amended to read:

14839.1. The department shall have sole responsibility for certifying and determining the eligibility of small businesses and microbusinesses under this chapter.

SEC. 7. Section 14840 of the Government Code is amended to read:

14840. The department shall submit an annual report to the Legislature no later than January 1 of each year containing the following information:

(a) Upon request, an up-to-date list of eligible small business bidders by general procurement and construction contract categories, noting company names and addresses and also noting which small businesses also qualify as microbusinesses.

(b) By general procurement and construction contract categories, statistics comparing the small business and microbusiness contract participation dollars to the total state contract participation dollars.

(c) By awarding department and general procurement and construction categories, statistics comparing the small business and microbusiness contract participation dollars to the total state contract participation dollars.

(d) Any recommendations for changes in statutes or state policies to improve opportunities for small businesses and microbusinesses.

(e) A statistical summary of small businesses and microbusinesses certified for state contracting by the number of employees at the business for each of the following categories: 0–25, 26–50, 51–75, and 76–100.

(f) To the extent feasible, beginning in the year 2002, the number of contracts awarded by the department in the categories specified in subdivision (e).

(g) The number of contracts and dollar amounts awarded annually pursuant to Section 14838.5 to small businesses, microbusinesses, and disabled veteran business enterprises.

SEC. 8. Section 14842 of the Government Code is amended to read:

14842. (a) A business that has obtained classification as a small business or microbusiness by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for classification, and which by reason of that classification has been awarded a contract to which it would not otherwise have been entitled, shall do all of the following:

(1) Pay to the state any difference between the contract amount and what the state's costs would have been if the contract had been properly awarded.

(2) In addition to the amount described in subdivision (a), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(3) Be ineligible to transact any business with the state for a period of not less than three months and not more than 24 months.

(b) All payments to the state pursuant to paragraph (1) of subdivision (a) shall be deposited in the fund out of which the contract involved was awarded.

(c) All payments to the state pursuant to paragraph (2) of subdivision (a) shall be deposited in the state General Fund.

(d) Prior to the imposition of any sanctions under subdivision (a), a business shall be entitled to a public hearing and to at least five working days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

SEC. 9. Section 14842.5 of the Government Code is amended to read:

14842.5. (a) It shall be unlawful for a person to do any of the following:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a small business or microbusiness enterprise for the purposes of this chapter.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or

denial of certification of any entity as a small business or microbusiness enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity that has requested certification as a small business or microbusiness enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this chapter.

(b) Any person who is found by the department to have violated any of the provisions of subdivision (a) is subject to a civil penalty of not more than five thousand dollars ($5,000).

(c) If a contractor, subcontractor, supplier, subsidiary, or affiliate thereof, has been found by the department to have violated subdivision (a) and that violation occurred within three years of another violation of subdivision (a) found by the department, the department shall prohibit that contractor, subcontractor, supplier, subsidiary, or affiliate thereof, from entering into a state project or state contract and from further bidding to a state entity, and from being a subcontractor to a contractor for a state entity and from being a supplier to a state entity.

SEC. 10. Section 2002 is added to the Public Contract Code, to read:

2002. Notwithstanding any other provision of law requiring a local agency to award contracts to the lowest responsible bidder, any local agency may do any of the following in facilitating contract awards to small businesses:

(a) Provide for a small business preference in construction, the procurement of goods, or the delivery of services where responsibility and quality are equal. The preference to a small business shall be up to 5 percent of the lowest responsible bidder meeting specifications.

(b) Establish a subcontracting participation goal for small businesses on contracts and grant a preference, up to a maximum of 5 percent, to those bidders who meet the goal.

(c) Require bidders to make good faith efforts to meet a subcontracting participation goal for small business contracts. Bidders that fail to meet the goal shall demonstrate that they made good faith efforts to utilize small business contractors.

SEC. 11. Section 10116 is added to the Public Contract Code, to read:

10116. (a) On January 1, of each year, each awarding department shall report to the Governor and the Legislature on the level of participation of business enterprises, by race, ethnicity, and gender of owner, in contracts as identified in this article for the fiscal year beginning July 1 and ending June 30. In addition, the report shall contain

the levels of participation of business enterprises, by race, ethnicity, and gender of owner, for the following categories of contracts:

(1) Construction.

(2) Purchases of materials, supplies, or equipment.

(3) Professional services.

(4) All contracts for a dollar amount of less than twenty-five thousand dollars ($25,000).

(b) Awarding departments are prohibited from using the data compiled under this section to discriminate or provide a preference in the awarding of any contracts.

(c) Contractors are prohibited from using the information compiled under this section to discriminate or provide a preference in the solicitation or acceptance of bids for subcontracting, or for materials or equipment, on the basis of race, color, sex, ethnic origin, or ancestry.

SEC. 12. It is the intent of the Legislature to enact legislation that will authorize local governmental entities to establish programs to increase the participation of small businesses in public contracting. In enacting that legislation, as well as in the other provisions of this act, it is the intent of the Legislature to act in conformity with the public contracting recommendations made by the Governor's Task Force on Diversity and Outreach in its report entitled, ''Report to the Governor on Outreach Options'' (August 1, 2000) and with existing Executive Orders.

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## CHAPTER 883

An act to amend Sections 8547.4, 8547.8, 19682, 19683, and 19702 of, to add Section 19683.1 to, and to add Article 3.5 (commencing with Section 8548) to Chapter 6.5 of Division 1 of Title 2 of, the Government Code, relating to improper governmental activities.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The State Auditor has responsibility for investigating and reporting improper state governmental activity pursuant to the California Whistleblower Protection Act (Article 3 (commencing with Section 8547) of Chapter 6.5 of Division 1 of Title 2 of the Government Code).

(b) Since 1993, the State Auditor has investigated improper governmental activities costing the public more than ten million dollars ($10,000,000).

(c) These investigations resulted from state employees and members of the public reporting suspected improper governmental activities to the State Auditor through the auditor's hotline.

(d) To promote responsible reporting of suspected improper governmental activities, the State Auditor and state agencies shall undertake a campaign to inform state employees about the California Whistleblower Protection Act.

SEC. 2. Section 8547.4 of the Government Code is amended to read:

8547.4. The State Auditor shall administer the provisions of this article and shall investigate and report on improper governmental activities. If, after investigating, the State Auditor finds that an employee may have engaged or participated in improper governmental activities, the State Auditor shall send a copy of the investigative report to the employee's appointing power. Within 60 days after receiving a copy of the State Auditor's investigative report, the appointing power shall either serve a notice of adverse action upon the employee who is the subject of the investigative report or set forth in writing its reasons for not taking adverse action. The appointing power shall file a copy of the notice of adverse action with the State Personnel Board in accordance with Section 19574, and shall submit a copy to the State Auditor. If the appointing power does not take adverse action, it shall submit its written reasons for not doing so to the State Auditor and the State Personnel Board, and adverse action may be taken as provided in Section 19583.5. Any employee who is served with a notice of adverse action may appeal to the State Personnel Board in accordance with Section 19575.

SEC. 3. Section 8547.8 of the Government Code is amended to read:

8547.8. (a) A state employee or applicant for state employment who files a written complaint with his or her supervisor, manager, or the appointing power alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by Section 8547.3, may also file a copy of the written complaint with the State Personnel Board, 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 board, shall be filed within 12 months of the most recent act of reprisal complained about.

(b) Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment 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.

Pursuant to Section 19683, any state civil service employee who intentionally engages in that conduct shall be disciplined by adverse action as provided by Section 19572.

(c) In addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment 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, any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the State Personnel Board pursuant to subdivision (a), and the board has issued, or failed to issue, findings pursuant to Section 19683.

(d) This section is not intended to prevent an appointing power, manager, or supervisor from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take a personnel action with respect to any state employee or applicant for state employment if the appointing power, manager, or supervisor reasonably believes any 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 (b) of Section 8547.2.

(e) 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, manager, or appointing power 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, manager, or appointing power 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.

(f) Nothing in this article shall be deemed to diminish the rights, privileges, or remedies of any employee under any other federal or state law or under any employment contract or collective bargaining agreement.

SEC. 4. Article 3.5 (commencing with Section 8548) is added to Chapter 6.5 of Division 1 of Title 2 of the Government Code, to read:

Article 3.5. Whistleblower Information

8548. For purposes of this article, ''state agency'' means every state office, officer, department, division, bureau, board, and commission, including the California State University and the University of California.

8548.1. No later than April 1, 2002, the State Auditor shall prepare for state employees a written explanation of the California Whistleblower Protection Act contained in Article 3 (commencing with Section 8547). The explanation shall include, but not be limited to, the following information:

(a) Instructions on how to contact the State Auditor by mail or telephone.

(b) A general overview of improper governmental activities and examples of three of the most common types of improper governmental activities that may be reported to the State Auditor.

(c) Examples of two of the most commonly reported governmental activities that the State Auditor does not have authority to investigate.

(d) An explanation of whistleblower protection available to state employees who report improper governmental activities to the State Auditor.

(e) The requirement that the State Auditor protect the anonymity of a person who reports improper governmental activity to the State Auditor.

(f) The State Auditor's authority in connection with violations of law discovered during an investigation of improper governmental activities.

8548.2. The State Auditor shall prepare for distribution to each state agency in an electronic format a notice containing the information in the written explanation prepared pursuant to Section 8548.1. No later than July 1, 2002, each state agency shall print and post this notice at its state office or offices in a location or locations where employee notices are maintained. A state agency shall not edit the written text of the notice but it may publish the notice in a manner it chooses, and it may include its own introductory language in the notice, provided that the language and the format selected do not alter the meaning of the notice.

8548.3. On July 1, 2002, and annually thereafter, every state agency shall send the information contained in the notice by electronic mail to its employees who have authorized access to electronic mail from the agency.

8548.4. The State Auditor shall post the information described in Section 8548.1 on the Web site of the Bureau of State Audits.

8548.5. The intentional failure of a state agency to comply with any provision of this article shall constitute an improper governmental activity for purposes of Article 3 (commencing with Section 8547).

SEC. 5. Section 19683 of the Government Code is amended to read:

19683. (a) The State Personnel Board shall initiate a hearing or investigation of a written complaint of reprisal or retaliation as prohibited by Section 8547.3 within 10 working days of its submission. The executive officer shall complete findings of the hearing or investigation within 60 working days thereafter, and shall provide a copy of the findings to the complaining state employee or applicant for state employment and to the appropriate supervisor, manager, employee, or appointing authority. 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.

(b) If the executive officer finds that the supervisor, manager, employee, or appointing power retaliated against the complainant for engaging in protected whistleblower activities, the supervisor, manager, employee, or appointing power 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 normal rules governing appeals, hearings, investigations, and disciplinary proceedings.

(c) If, after the hearing, the State Personnel Board determines that a violation of Section 8547.3 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, compensatory damages, and the expungement of any adverse records of the state employee or applicant for state employment who was the subject of the alleged acts of misconduct prohibited by Section 8547.3.

(d) Whenever the board determines that a manager, supervisor, or employee, who is named a party to the retaliation complaint, has violated Section 8547.3 and that violation constitutes legal cause for discipline under one or more subdivisions of Section 19572, it shall impose a just and proper penalty and cause an entry to that effect to be made in the manager's, supervisor's, or employee's official personnel records.

(e) Whenever the board determines that a manager, supervisor, or employee, who is not named a party to the retaliation complaint, may have engaged in or participated in any act prohibited by Section 8547.3, the board shall notify the manager's, supervisor's, or employee's appointing power of that fact in writing. Within 60 days after receiving the notification, the appointing power shall either serve a notice of adverse action on the manager, supervisor, or employee, or set forth in writing its reasons for not taking adverse action against the manager,

supervisor, or employee. The appointing power shall file a copy of the notice of adverse action with the board in accordance with Section 19574. If the appointing power declines to take adverse action against the manager, supervisor, or employee, it shall submit its written reasons for not doing so to the board, which may take adverse action against the manager, supervisor, or employee as provided in Section 19583.5. A manager, supervisor, or employee who is served with a notice of adverse action pursuant to this section may file an appeal with the board in accordance with Section 19575.

(f) In order for the Governor and the Legislature to determine the need to continue or modify state personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by public 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.

SEC. 6. Section 19682 of the Government Code is amended to read:

19682. Every person who violates any provision of this chapter is guilty of a misdemeanor. In accordance with Section 19683, action may be taken by the appointing power, or the executive officer of the board may file charges, against a state employee who violates any provisions of this chapter.

SEC. 7. Section 19683.1 is added to the Government Code, to read:

19683.1. The State Personnel Board shall assist the State Auditor in preparing the written explanation required by Section 8548.1 by providing the State Auditor with a written explanation of the board's role in investigating a claim that a state employee has been subject to retaliation as a result of reporting improper governmental activity.

SEC. 8. Section 19702 of the Government Code is amended to read:

19702. (a) A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability. A person shall not be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. For purposes of this article, ''discrimination'' includes harassment. This subdivision is declaratory of existing law.

(b) As used in this section, the term ''physical disability'' has the definition set forth in Section 12926, as that section presently reads or as it subsequently may be amended.

(c) As used in this section, the term ''mental disability'' has the definition set forth in Section 12926, as that section presently reads or as it subsequently may be amended.

(d) Notwithstanding subdivisions (b) and (c), if the definition of disability used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (b) or (c), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (b) and (c). The definitions of subdivisions (b) and (c) shall not be deemed to refer to or include conditions excluded from the federal definition of ''disability'' pursuant to Section 511 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

(e) If the board finds that a person has engaged in discrimination under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the board, with the consent of the complainant, shall provide the local district attorney's office with a copy of its decision and order.

(f) (1) If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 6 or 8. If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, adding additional seniority, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(g) Any person claiming discrimination within the state civil service may submit a complaint that shall be in writing and set forth the particulars of the alleged discrimination, the name of the appointing authority, the persons alleged to have committed the unlawful discrimination, and any other information that may be required by the

board. The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself.

(h) (1) Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in adverse actions or rejections on probation shall be filed in accordance with Sections 19175 and 19575.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in disciplinary actions defined in Section 19576.5 shall be filed in accordance with that section. Complaints of discrimination in all other disciplinary actions shall be filed in accordance with Section 19575. Complaints of discrimination in rejections on probation shall be filed in accordance with Section 19175.3.

(i) (1) When an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing of the complaint, the use of subpoenas, or any other action which will effect the purposes of this section.

(2) This subdivision shall not apply to complaints of discrimination filed in accordance with Section 19576.2.

(j) If a person demonstrates by a preponderance of evidence that having opposed any practice made an unlawful employment practice under this part, or having made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part was a contributing factor in any adverse employment action taken against him or her, the burden of proof shall be on the supervisor, manager, employee, or appointing power to demonstrate by clear and convincing evidence that the alleged adverse employment action would have occurred for legitimate, independent reasons even if the person had not engaged in activities protected under this part. If the supervisor, manager, employee, or appointing power fails to meet this burden of proof in any administrative review, challenge, or adjudication

in which retaliation has been demonstrated to be a contributing factor, the person shall have a complete affirmative defense to the adverse employment action. As used in this part, ''adverse employment action'' includes promising to confer, or conferring any benefit, effecting, or threatening to effect, any reprisal, or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

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## CHAPTER 884

An act to add Article 3.1 (commencing with Section 44470) to Chapter 3 of Part 25 of the Education Code, relating to teachers, and making an appropriation therefor.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) There is a great need for quality professional development for public school teachers.

(b) Teachers need extensive training and professional development to master the academic content standards adopted by the State Board of Education pursuant to Section 60605 of the Education Code.

(c) The Public Schools Accountability Act of 1999 and the high school exit examination place added pressure on teachers to raise pupil academic achievement and increase the need for quality professional development.

(d) The Professional Development Task Force, convened by the Superintendent of Public Instruction, recommends the development of standards for professional development to provide uniformity among and ensure high quality in state funded professional development programs and to offer direction to school districts in planning their professional development activities.

(e) The task force also recommends that school districts review their professional development plans in light of any professional development standards that are developed and adopted by the State Board of Education.

SEC. 2. Article 3.1 (commencing with Section 44470) is added to Chapter 3 of Part 25 of the Education Code, to read:

Article 3.1. Standards for Professional Development

44470. (a) (1) The State Department of Education shall issue a request for proposals to contract for the development of standards for professional development for educators and instructional leaders.

(2) The standards shall present a vision of ongoing, high quality professional development, give special attention to high need schools and school districts, and build on existing work on quality professional development, including the Designs for Learning system.

(3) The contractor shall also review and give consideration to other existing professional development programs.

(4) The standards shall serve as guidelines for providers of professional development activities and may be used to facilitate the coordination among existing professional development programs.

(b) By January 1, 2003, the entity with which the department contracts shall submit the standards to the Superintendent of Public Instruction for approval after which the superintendent shall submit the standards to the State Board of Education for approval.

44471. The entity with which the State Department of Education contracts shall convene a committee of experts in teacher development, professional development, and instructional leadership to develop the standards and disseminate them for field review. The Superintendent of Public Instruction shall determine the members of the committee of experts and shall include one representative from the University of California and one representative from the California State University.

44472. The standards developed pursuant to this article shall meet all of the following characteristics:

(a) Describe core concepts of high quality professional development and differentiate, where necessary or appropriate, program qualities for high need schools.

(b) Support respect for individual experience and adult learning theory.

(c) Integrate the academic content standards adopted by the State Board of Education pursuant to Section 60605 and instructional guides.

(d) Incorporate the California Standards for the Teaching Profession adopted by the Commission on Teacher Credentialing in January 1997.

(e) Provide equitable and timely access to professional development for all educators.

(f) Require program models and designs that include evidence based assessment of outcomes for participants.

(g) Utilize the results of evaluation research based on models of organizational learning and increased pupil learning to improve programs.

(h) Describe the core skills and competencies of coaches, mentors, support providers, university supervisors, and consulting teachers.

SEC. 3. There is hereby appropriated from the General Fund to the Superintendent of Public Instruction the sum of one hundred forty thousand dollars ($140,000) for the purpose of contracting for the development of standards for professional development pursuant to Article 3.1 (commencing with Section 44470) of Chapter 3 of Part 25 of the Education Code.

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## CHAPTER 885

An act to amend Sections 31013 and 31400.1 of, and to add Section 31119 to, the Public Resources Code, relating to coastal resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

I have signed Assembly Bill 343 with a deletion. I am deleting the appropriation in Section 4(b) of up to $250,000 for the educational grant program created in Section 2 of this bill. Section 2 would create the grant program by adding Section 31119 to the Public Resources Code. Section 4(b) would allocate funds originally appropriated in Schedule (3) of Item 3760-301-00001 of the 2000 Budget Act to fund the new program.

This bill would allow the State Coastal Conservancy to use up to $250,000 of a General Fund capital outlay appropriation to undertake educational projects for all ages relating to the protection, preservation, enhancement or maintenance of coastal resources and to award grants to nonprofit organizations, educational institutions and public agencies for this purpose. The bill would also allow the reallocation of $3,750,000 General Fund originally appropriated for the purchase and restoration of the Bel Marin Keys property to purchase alternate properties in Marin County.

I cannot support the $250,000 General Fund allocation at this time. To the extent that grant funding is awarded by the Conservancy to local educational agencies or to community colleges, such funds would raise the Proposition 98 funding guarantee by the same amount, thus reducing future budgetary flexibility.

Although grants awarded from non-General Fund sources should not affect the Proposition 98 guarantee, I am concerned that there may be confusion on this point in the future. Consequently, I urge the legislature to pass corrective legislation clarifying that this program cannot be used to award grants to local educational agencies or community colleges when the source of funds for those grants is the General Fund.

GRAY DAVIS, Governor

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

SECTION 1. Section 31013 of the Public Resources Code is amended to read:

31013. ''Nonprofit organization'' means any private, nonprofit organization, that qualifies under Section 501(c)(3) of the United States Internal Revenue Code, and whose purposes are consistent with this division.

SEC. 2. Section 31119 is added to the Public Resources Code, to read:

31119. (a) (1) The conservancy may undertake educational projects and programs for pupils in kindergarten to grade 12, inclusive, relating to the preservation, protection, enhancement, and maintenance of coastal resources, and may award grants to nonprofit organizations, educational institutions, and public agencies for those purposes.

(2) An educational grant program established pursuant to paragraph (1) shall include all of the following:

(A) Funds provided for the educational program may be used for planning and implementation or development of marine science education programs.

(B) An educational program shall meet State Board of Education adopted content standards.

(C) The conservancy may consult with the Superintendent of Public Instruction prior to awarding grants pursuant to this section.

(D) A grant recipient shall use a portion of any funding provided for an educational program to promote maximum participation of pupils and schools, by providing scholarships or grants for this purpose.

(E) A nonprofit organization shall comply with all of the following as a condition of receiving a grant:

(i) Document increased pupil participation in its educational programs.

(ii) Provide outreach to low income, underserved, and noncoastal areas.

(iii) Maintain any data necessary for evaluation, as determined by the conservancy.

(b) The conservancy is not required to take any action under subdivision (a), unless and until new funds from sources not currently available to the conservancy are made available by the Legislature for the purposes described in subdivision (a). No more than 10 percent of the funds provided for the educational programs under subdivision (a) may be used for the costs of the conservancy in administering the projects.

SEC. 3. Section 31400.1 of the Public Resources Code is amended to read:

31400.1. The conservancy may award grants to any public agency or nonprofit organization to acquire land, or any interest therein, or to develop, operate, or manage lands for public access purposes to and along the coast. No grants may be awarded to any local agency unless

the conservancy has first determined that the subject accessway will serve more than local public needs.

SEC. 4. (a) The expenditure of funds appropriated by Schedule (4) of Item 3760-301-0001 of Section 2.00 of the Budget Act of 2000 (Ch. 52, Stats. 2000) is not subject to Section 13332.11 of the Government Code.

(b) Of the funds appropriated in Schedule (3) of Item 3760-301-0001 of Section 2.00 of the Budget Act of 2000 for the purchase or restoration of Bel Marin Keys wetlands, an amount not to exceed three million seven hundred fifty thousand dollars ($3,750,000) may be expended by the State Coastal Conservancy for the purchase of other Marin County baylands and related uplands, subject to the conditions set forth in the second and third sentences of Provision (5) of that item. Notwithstanding the requirements of Provision (5) of Item 3760-301-0001 of Section 2.00 of the Budget Act of 2000, an additional amount of the funds appropriated in Schedule (3) of Item 3760-301-0001 of Section 2.00 of the Budget Act of 2000, not to exceed two hundred fifty thousand dollars ($250,000), may be used for the purposes of Section 31119 of the Public Resources Code, if Assembly Bill 343 of the 2001–02 Regular Session is enacted and adds that section to the Public Resources 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 establish education programs relating to coastal resources as soon as possible, to award grants to a public agency or nonprofit organization for coastal access as soon as possible, to accomplish the Hamilton Wetland Restoration Project in a timely manner so that it is available to receive dredged material from the Port of Oakland and other San Francisco Bay dredging projects for beneficial reuse as soon as possible, and to complete other coastal projects as soon as possible, it is necessary that this act take effect immediately.

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## CHAPTER 886

An act to add Article 3.5 (commencing with Section 52360) to Chapter 9 of Part 28 of the Education Code, relating to career education.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

I am signing Assembly Bill 1018 with a line item veto.

This bill establishes the Industry-Based Certification Incentive Grant Program, which is an innovative approach to using one-time funds for matching the skills that are taught to students with the certification standards that are set by an industry. AB 1018 would allow the Department of Education (SDE) to redirect funds identified in this bill to develop model curriculum standards. Finally, this bill would require the SDE to allocate any savings resulting from this program for the purposes of the School-to-Career Technology Training Center Program, which is contained in AB 769 (Goldberg).

I am signing this bill, with the understanding that the funding earmarked for this bill will fully fund both planning grants and implementation grants, on a one-time basis, for the Industry-Based Certification Incentive Grant Program. I must however, delete the funding which is provided for the SDE for model curriculum standards, as this provision would be in conflict with the constitutional restrictions on the use of Proposition 98 funds. In addition, I am deleting the provision that requires the SDE to allocate any savings from the Industry-Based Certification Incentive Grant Program to the Industry Based Certification Incentive Grant Program. AB 769 would result in significant costs, which I cannot commit to given the fiscal condition of the state.

The following language reflects my veto action:

SEC. 3. (a) (1) Of the amount specified in Schedule (27) of Item 6110-485 of Section 2.00 of the Budget Act of 2001, four million three hundred fifty thousand dollars ($4,350,000) is hereby allocated to the State Department of Education as follows:

(1) Four million three hundred fifty thousand dollars ($4,350,000) for purposes of the Industry-Based Certification Incentive Grant Program established by Article 3.5 (commencing with Section 52360) of Chapter 9 of Part 28 of the Education Code.

GRAY DAVIS, Governor

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

SECTION 1. (a) The Legislature finds and declares that as the number and diversity of California's high school pupil population continues to grow, there is a corresponding need to provide educational programs that allow pupils to prepare for high-skill, high-wage careers and higher education.

(b) It is the intent of the Legislature that these programs be built to industry standards and provide pupils with portable certifications and licenses.

(c) In order to promote this goal, the Legislature finds and declares that it is necessary to provide startup funding to local education agencies for the training of instructors and the purchase of equipment for implementation of the program.

(d) The purpose of this act is to promote the following:

(1) Improve pupil academic performance and increase the rate of high school graduation through the establishment of, and participation in, industry-based certification programs in public secondary schools and adult education programs.

(2) Expand employability for high school pupils for high demand jobs with high earning potential.

SEC. 2. Article 3.5 (commencing with Section 52360) is added to Chapter 9 of Part 28 of the Education Code, to read:

Article 3.5. Industry-Based Certification Incentive Grant Program

52360. (a) The State Department of Education, in consultation with the Secretary for Education, shall administer the Industry-Based Certification Incentive Grant Program, which is hereby established for the purpose of awarding grants to selected school districts, county offices of education, and regional occupational centers and programs to establish industry-based certification programs within their career technical programs.

(b) Programs funded pursuant to this article shall offer a course of study that supports pupil academic preparation, high school graduation, entry into postsecondary education, and preparation for high-skilled, high-wage careers. The programs shall be directly linked to, and supported by, business and industry at both the state and local levels.

(c) The Superintendent of Public Instruction, in consultation with the Secretary for Education, shall develop criteria and a process to select grant recipients. First priority for the award of grants shall be given to programs that will operate in high schools that scored in the bottom two deciles on the Academic Performance Index. The number of grant recipients shall be limited to the number that can be fully funded, as set forth in Section 52363, with the amount of funds appropriated for purposes of this article.

52361. School districts providing secondary instruction or adult education, or both, county offices of education providing career education programs, and regional occupational centers and programs are eligible to be selected for funding pursuant to this article if they submit a grant application to the Superintendent of Public Instruction that does all of the following:

(a) Specifies the type of training and certification that will be offered and how it will help meet local employment demands.

(b) Identifies instructional staff who have obtained, or will obtain, the required industry-based certification prior to the implementation of the program established pursuant to this article in the school district, the county office of education, or regional occupational center and program, as the case may be.

(c) Specifies the instructional equipment and availability of facilities needed for the delivery of instruction.

(d) Identifies industry partners and the commitment of industry partners to employ pupils completing newly established certification and licensing programs.

(e) Includes other information specified by the Superintendent of Public Instruction, in consultation with the Secretary for Education.

52362. As a condition of receiving funding pursuant to this article, an applicant shall demonstrate that it has secured financial support from industry to provide a one-to-one match of funding received pursuant to

this article, and shall provide annual fiscal, program performance, and pupil outcome data to the State Department of Education.

52363. A grant recipient shall receive a one year planning grant not to exceed fifteen thousand dollars ($15,000) which shall be utilized for planning, teacher and program certification, development of integrated curricula, staff development, and building formalized partnerships with business and industry. Upon successful completion of a high quality implementation plan for an industry-based certification program, a grant recipient shall receive a one-time implementation grant not to exceed eighty-five thousand dollars ($85,000) to assist in the purchase and installation of equipment, teacher and program certification, staff development, and other associated startup costs.

52364. The State Department of Education shall evaluate the effectiveness of each industry-based certification program funded pursuant to this article based on specific program goals developed by the department. These goals shall allow the evaluation to measure the extent to which the programs improved pupil academic performance, increased the rate of high school graduation, and expanded employability of high school pupils for high demand jobs with high earning potential.

52365. The State Department of Education may recover its administrative costs from funds appropriated for purposes of this article.

SEC. 3. (a) (1) Of the amount specified in Schedule (27) of Item 6110-485 of Section 2.00 of the Budget Act of 2001, four million four hundred fifty thousand dollars ($4,450,000) is hereby allocated to the State Department of Education as follows:

(1) Four million three hundred fifty thousand dollars ($4,350,000) for purposes of the Industry-Based Certification Incentive Grant Program established by Article 3.5 (commencing with Section 52360) of Chapter 9 of Part 28 of the Education Code.

(2) One hundred thousand dollars ($100,000) for purposes of Section 51226 of the Education Code.

(b) The State Department of Education shall allocate any of the funds described in subdivision (a) that it determines are not necessary for those purposes to any of the following purposes:

(1) Article 3.5 (commencing with Section 52360) of Chapter 9 of Part 28 of the Education Code, Industry-Based Certification Incentive Grant Program.

(2) Section 51226 of the Education Code.

(3) Chapter 17.1 (commencing with Section 52360) to Chapter 9 of Part 28 of the Education Code, the School-to-Career Technology Training Center Program.

CHAPTER 887

An act to amend Sections 52052, 52053, 52054, and 52055.5 of, and to add Section 52052.2 to, the Education Code, relating to school performance.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 52052 of the Education Code is amended to read:

52052. (a) (1) By July 1, 1999, the Superintendent of Public Instruction, with approval of the State Board of Education, shall develop an Academic Performance Index (API), to measure the performance of schools, especially the academic performance of pupils, and to demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools.

(2) For purposes of this section, a numerically significant ethnic or socioeconomically disadvantaged subgroup is a subgroup that constitutes at least 15 percent of a school's total pupil population and consists of at least 30 pupils. An ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school. For schools whose API scores are based on test scores of no fewer than 11 and no more than 99 pupils, numerically significant subgroups shall be defined by the Superintendent of Public Instruction, with approval by the State Board of Education.

(3) The API shall consist of a variety of indicators currently reported to the State Department of Education including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils and certificated school personnel for elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(A) The pupil data collected for the API that comes from the achievement test administered pursuant to Sections 60640 and 60644 and the high school exit examination administered pursuant to Section 60851, when fully implemented, shall be disaggregated by special education status, English language learners, socioeconomic status, gender and ethnic group. Only the test scores of pupils who were enrolled in a school district in the prior fiscal year may be included in the test results reported in the API. Results of the achievement test and

other tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index.

(B) Before including high school graduation rates and attendance rates in the index, the Superintendent of Public Instruction shall determine the extent to which the data are currently reported to the state and the accuracy of the data.

(C) If the Superintendent of Public Instruction determines that accurate data for these indicators is not available, the Superintendent of Public Instruction shall report to the Governor and the Legislature by September 1, 1999, and recommend necessary action to implement an accurate reporting system.

(b) Pupil scores from the following tests, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API:

(1) The assessment of the applied academic skills matrix test developed pursuant to Section 60604.

(2) The nationally normed test designated pursuant to Section 60642.

(3) The standards-based achievement tests provided for in Section 60642.5.

(4) The high school exit examination.

(c) Based on the API, the Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, expected annual percentage growth targets for all schools based on their API baseline score from the previous year. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the State Board of Education pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between a school's actual API score and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the State Board of Education may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically significant ethnic and socioeconomically disadvantaged subgroups, as defined in subdivision (a) of Section 52052, are making comparable improvement.

(d) Upon adoption of state performance standards by the State Board of Education, the Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, a statewide API performance target that includes consideration of performance standards

and represents the proficiency level required to meet the state performance target. When the API is fully developed, schools must, at a minimum, meet their annual API growth targets to be eligible for the Governor's Performance Award Program as set forth in Section 52057. The State Board of Education may establish additional criteria that schools must meet to be eligible for the Governor's Performance Awards Program.

(e) Beginning in June 2000, the API shall be used for both of the following:

(1) Measuring the progress of schools selected for participation in the Immediate Intervention/Underperforming Schools Program pursuant to Section 52053.

(2) Ranking all public schools in the state for the purpose of the High Achieving/Improving Schools Program pursuant to Section 52056.

(f) (1) A comprehensive high school, middle school, or elementary school with 11 to 99 valid test scores of pupils who were enrolled in a school within the same school district in the prior fiscal year shall receive an API score with an asterisk that indicates less statistical certainty than API scores based on 100 or more test scores.

(2) A school under the jurisdiction of a county board of education or a county superintendent of schools, a community day school, or an alternative school, including continuation high schools and opportunity schools, may receive an API score if the school has 11 more or more valid test scores and the school chooses to receive an API score for at least three years.

(3) A school that participates in the Immediate Intervention/Underperforming Schools Program described in Section 52053 shall receive an API score for the duration of its participation in that program, unless the Superintendent of Public Instruction determines that an API score would be an invalid measure of the school's performance for one or more of the following reasons:

(A) Irregularities in testing procedures occurred.

(B) The data used to calculate the school's API score are not representative of the pupil population at the school.

(C) Significant demographic changes in the school's pupil population render year-to-year comparisons of pupil performance invalid.

(D) The Department of Education discovers or receives information indicating that the integrity of the school's API score has been compromised.

(g) Only schools with 100 or more test scores contributing to the API may be included in the API rankings.

(h) By July 1, 2000, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop an alternative accountability system for schools with fewer than 100 test scores

contributing to the schools' API scores, and for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools.

SEC. 2. Section 52052.2 is added to the Education Code, to read:

52052.2. A school that receives an API score with an asterisk shall be eligible for the Governor's Performance Awards Program, as set forth in Section 52057 and for participation in the Immediate Intervention/Underperforming Schools Program, as set forth in Section 52053.

SEC. 3. Section 52053 of the Education Code is amended to read:

52053. (a) The Immediate Intervention/Underperforming Schools Program is hereby established. By August 15, 1999, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall invite schools that scored below the 50th percentile on the achievement tests administered pursuant to Section 60640 both in the spring of 1998 and in the spring of 1999 to participate in the Immediate Intervention/Underperforming Schools Program. A school invited to participate may take any action not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates to improve pupil performance.

(b) The total number of schools participating in the program in 1999 shall be 430. Unless subdivision (d) applies, schools that apply will be selected based on the order in which they apply within ranks of deciles, not to exceed 86 per decile, within the following grade level categories:

(1) No more than 301 elementary schools.

(2) No more than 78 middle schools.

(3) No more than 52 high schools.

(c) The 86 schools selected within each decile range pursuant to subdivision (b) shall proportionately represent elementary, middle, and high schools and shall provide statewide proportionate geographic representation of urban and rural schools.

(d) If fewer than the number of schools in any grade level category apply, schools that scored below the 50th percentile in those grade level categories that did not apply for the program shall randomly be selected by the Superintendent of Public Instruction, with the approval of the State Board of Education, to participate based on their proportional representation in the state until the number of schools in each grade level category set forth in subdivision (b) is achieved.

(e) If more than the requisite number of schools apply for any grade level category, the Superintendent of Public Instruction shall select an array of schools that reflect a broad range of academic performance of schools that scored below the 50th percentile, until the number of

schools in each grade level category set forth in subdivision (b) is achieved.

(f) A school selected to participate on or before September 1, 1999, shall be awarded a planning grant from funds appropriated pursuant to paragraph (1) of subdivision (a) of Section 2 of the act adding this section in the amount of fifty thousand dollars ($50,000). A school selected to receive federal funds pursuant to paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall be awarded an implementation grant in an amount of at least fifty thousand dollars ($50,000) pursuant to Public Law 105-78.

(g) Schools receiving funding under paragraph (2) of subdivision (a) of Section 2 of the act adding this section shall comply with Public Law 105-78.

(h) By September 15, 2000, and each year thereafter, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall identify schools that failed to meet their Academic Performance Index (API) growth targets and that have an API score below the 50th percentile in the previous school year relative to all other public elementary, middle or high schools. The Superintendent of Public Instruction shall invite these schools to participate in the Immediate Intervention/Underperforming Schools Programs. A school invited to participate may take any action to improve pupil performance not otherwise prohibited under state or federal law and that would not require reimbursement by the Commission on State Mandates.

(i) The total number of schools selected for participation in the program shall be no more than the number that can be funded through the total appropriation for the planning grants referenced in subdivision (*l*) below.

(j) If fewer schools apply for participation than can be funded, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall randomly select the balance of schools from schools eligible to participate that did not apply. Insofar as possible, the schools randomly selected should reflect a representative proportion of elementary, middle and high schools, as well as a broad range of academic achievement.

(k) If more schools apply for participation than can be funded, the schools shall be selected on the order in which they apply. Insofar as possible, the schools selected should reflect a representative proportion of elementary, middle and high schools, as well as a broad range of academic achievement.

(*l*) A school selected to participate on or before October 15, 2000, and each year thereafter, shall be awarded a planning grant from funds appropriated pursuant to this act of fifty thousand dollars ($50,000).

(m) Schools selected for participation in the program shall be notified by the Superintendent of Public Instruction no later than October 15 of each year.

SEC. 4. Section 52054 of the Education Code is amended to read:

52054. (a) By November 15 of the year that the school is selected to participate, the governing board of a school district having jurisdiction over a school selected for participation in the program shall contract with an external evaluator from the list of external evaluators and shall appoint a broad-based schoolsite and community team, consisting of a majority of nonschoolsite personnel. In a school that has a limited-English-proficient pupil population that constitutes at least 40 percent of the total pupil population, an external evaluator shall have demonstrated experience in working with a limited-English-proficient pupil population. Not less than 20 percent of the members of the team shall be parents or legal guardians of pupils in the school.

(b) The selected external evaluator shall solicit input from the parents and legal guardians of the pupils of the school. At a minimum, the evaluator shall do all of the following:

(1) Inform the parents and legal guardians, in writing, that the school has been selected to participate in the Immediate Intervention/Underperforming Schools Program due to its below average performance.

(2) Hold a public meeting at the school, in cooperation with the principal, to which all parents and legal guardians of pupils in the school receive a written invitation. The invitation to the meeting may be combined with the written notice required by paragraph (1).

(3) Solicit, at the public meeting, the recommendations and opinions of the participating parents and legal guardians of pupils in the school regarding actions that should be taken to improve the performance of the school. These opinions and recommendations shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section.

(4) Notify all parents and legal guardians of pupils in the school of their opportunity to provide written recommendations of actions that should be taken to improve the performance of the school which shall be considered by the external evaluator and the community team in the development of the action plan pursuant to this section. Notice required by this subdivision may be combined with the written notice required by paragraph (1).

(c) By February 15 of the school year in which the school is selected to participate, the selected external evaluator, in collaboration with the broad-based schoolsite and community team selected pursuant to subdivision (a), shall complete a review of the school that identifies weaknesses that contribute to the school's below average performance,

make recommendations for improvement, and begin to develop an action plan to improve the academic performance of the pupils enrolled at the school. The action plan shall include percentage growth targets at least as high as the annual growth targets adopted by the State Board of Education pursuant to Section 52052. The action plan shall include an expenditure plan and shall be of a scope that does not require expenditure of funds in excess of those provided pursuant to this article or otherwise available to the school. The action plan may not be of a scope that requires reimbursement by the Commission on State Mandates for its implementation.

(d) At a minimum, the action plan shall do all of the following:

(1) Review and include the school and district conditions identified in the school accountability report card pursuant to Section 33126.

(2) Identify the current barriers at the school and district toward improvements in pupil achievement.

(3) Identify schoolwide and districtwide strategies to remove these barriers.

(4) Review and include school and school district crime statistics, in accordance with Section 628.5 of the Penal Code.

(5) Examine and consider disaggregated data regarding pupil achievement and other indicators to consider whether all groups and types of pupils make adequate progress toward short-term growth targets and long-term performance goals. The disaggregated data to be included and considered by the plan shall, at a minimum, provide information regarding the achievement of English language learners, pupils with exceptional needs, pupils who qualify for free and reduced price meals, and pupils in numerically significant subgroups.

(6) Set short-term academic objectives pursuant to Section 52052 for a two-year period that will allow the school to make adequate progress toward the growth targets established for each participating school for pupil achievement as measured by all of the following to the extent that the data is available for the school:

(A) The achievement test administered pursuant to Section 60640.

(B) Graduation rates for grades 7 to 12, inclusive.

(C) Attendance rates for pupils and school personnel for elementary, middle, and secondary schools.

(D) Any other indicators approved by the State Board of Education.

(e) The school action plan shall focus on improving pupil academic performance, improving the involvement of parents and guardians, improving the effective and efficient allocation of resources and management of the school, and identifying and developing solutions that take into account the underlying causes for low performance by pupils.

(f) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(g) The school action plan may propose to increase the number of instructional days offered at the schoolsite and also may propose to increase up to a full 12 months the amount of time for which certificated employees are contracted, if all of the following conditions are met:

(1) Provisions of the plan proposed pursuant to this subdivision shall not violate current applicable collective bargaining agreements.

(2) An agreement is reached with the exclusive representative concerning staffing specifically to accommodate the extended school year or 12-month contract.

(h) The team, in the development of the action plan, shall consult with the exclusive representatives of employee organizations, where they exist.

(i) Upon its completion, the action plan shall be submitted to the governing board of the school districts for its approval. After the plan is approved, but no later than May 15 of the year that follows the year the school is selected to participate, the plan shall be submitted to the Superintendent of Public Instruction with a request for funding in the form prescribed by the Superintendent of Public Instruction, who shall review the school action plan and recommend approval or disapproval of the school's request for funding to the State Board of Education.

(j) Not later than July 15 of the year next following the year in which a school is selected for participation, the State Board of Education shall review and approve or disapprove the school's request for funding, based on the recommendation of the Superintendent of Public Instruction. Within 30 days of the State Board of Education's review, the Superintendent of Public Instruction shall notify the effected school districts of the state of the board's action regarding the request for funding. In conjunction with its approval of a request for funding to implement a school's action plan, the State Board of Education may, at the request of the governing board of the school district or the county board of education for a school under its jurisdiction, waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 64000 if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46300.

SEC. 5. Section 52055.5 of the Education Code is amended to read:

52055.5. (a) Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that has not met its growth targets each year,

but demonstrates significant growth, as determined by the State Board of Education, shall continue to participate in the program for an additional year and to receive funding in the amount specified in Section 52054.5. Thirty-six months after receipt of funds pursuant to Section 52054.5, a school is no longer eligible to receive funding pursuant to that section.

(b) Twenty-four months after receipt of funding pursuant to Section 52054.5, a school that has not met its growth targets each year and has failed to show significant growth, as determined by the State Board of Education, shall be deemed a low-performing school. Notwithstanding any other provision of law, the Superintendent of Public Instruction shall assume all the legal rights, duties, and powers of the governing board with respect to that school. The Superintendent of Public Instruction, in consultation with the State Board of Education and the governing board of the school district, shall reassign the principal of that school subject to the findings in subdivision (d). In addition to reassigning the principal, the Superintendent of Public Instruction, in consultation with the State Board of Education, shall, notwithstanding any other provision of law, do at least one of the following:

(1) Revise attendance options for pupils to allow them to attend any public school in which space is available. If additional attendance options are made available, nothing in this option shall be construed to require either the sending or receiving school district to incur additional transportation costs.

(2) Allow parents to apply directly to the State Board of Education for the establishment of a charter school and allow parents to establish the charter school at the existing schoolsite.

(3) Under the supervision of the Superintendent of Public Instruction, assign the management of the school to a college, university, county office of education, or other appropriate educational institution. However, the Superintendent of Public Instruction may not assume the management of the school.

(4) Reassign other certificated employees of the school.

(5) Renegotiate a new collective bargaining agreement at the expiration of the existing collective bargaining agreement.

(6) Reorganize the school.

(7) Close the school.

(c) In addition to the actions listed in subdivision (b), the Superintendent of Public Instruction, in consultation with the State Board of Education, may take any other action considered necessary or desirable against the school district or the school district governing board, including appointment of a new superintendent or suspension of the authority of the governing board with respect to the school or schools identified pursuant to subdivision (b).

(d) Before the Superintendent of Public Instruction may take any action against a principal pursuant to subdivision (b), the Superintendent of Public Instruction or a designee of the superintendent shall hold a public hearing on the matter in the school district and make both of the following findings:

(1) A finding that the principal had the authority to take specific enumerated actions that would have helped the school meet its performance goals.

(2) A finding that the principal failed to take specific enumerated actions pursuant to paragraph (1).

(e) A school that has not met its growth targets within 36 months of receiving funding pursuant to Section 52054.5, but has shown significant growth, as determined by the State Board of Education, shall continue to be monitored by the Superintendent of Public Instruction until it meets its annual growth target or the statewide performance target. If, in any year between the third year of implementation funding and the first year the school meets its growth target, the school fails to make significant growth, as determined by the State Board of Education, that school shall be deemed a low-performing school and subject to the provisions of paragraphs (1) to (7), inclusive, of subdivision (b).

(f) An action taken pursuant to subdivision (b), (c), or (d) shall not increase local costs or require reimbursement by the Commission on State Mandates.

(g) An action taken pursuant to subdivision (b), (c), or (d) shall be accompanied by specific findings by the Superintendent of Public Instruction and the State Board of Education that the action is directly related to the identified causes for continued failure by a school to meet its performance goals.

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## CHAPTER 888

An act to amend Section 33352, 33353, 33354, and 35179 of the Education Code, relating to interscholastic activities.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 33352 of the Education Code is amended to read:

33352. (a) The State Department of Education shall exercise general supervision over the courses of physical education in elementary

and secondary schools of the state; advise school officials, school boards, and teachers in matters of physical education; and investigate the work in physical education in the public schools.

(b) 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. Section 33353 of the Education Code is amended to read:

33353. (a) The California Interscholastic Federation is a voluntary organization consisting of school and school-related personnel with responsibility for administering interscholastic athletic activities in secondary schools. It is the intent of the Legislature that the California Interscholastic Federation, in consultation with the State Department of Education, implement the following policies:

(1) Give the governing boards of school districts specific authority to select their athletic league representatives.

(2) Require that all league, section, and state meetings affiliated with the California Interscholastic Federation be subject to the notice and hearing requirements of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code).

(3) Establish a neutral final appeals body to hear complaints related to interscholastic athletic policies.

(b) The California Interscholastic Federation shall report to the Legislature and the Governor on its evaluation and accountability activities undertaken pursuant to this section on or before January 1, 2005.

(c) 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. Section 33354 of the Education Code is amended to read:

33354. (a) The State Department of Education shall have the following authority over interscholastic athletics:

(1) The department may state that the policies of school districts, of associations or consortia of school districts, and of the California Interscholastic Federation, concerning interscholastic athletics, are in compliance with both state and federal law.

(2) If the department states that a school district, an association, or consortium of school districts, or the California Interscholastic Federation is not in compliance with state or federal law, the department may require the school district, association, or consortium, or the federation to adjust its policy so that it is in compliance. However, the department shall not have authority to determine the specific policy that a school district, association, or consortium, or the federation must adopt in order to comply with state and federal laws.

(3) If the department states that a school district, association, or consortium, or the federation is not in compliance with state or federal law in matters relating to interscholastic activities, and the school district, association, or consortium, or the federation does not change its policy in order to comply with these laws, the department may commence with appropriate legal proceedings against the California Interscholastic Federation, the school district or against school districts that are members of the California Interscholastic Federation or the association or consortium that the department states is in noncompliance. In a legal proceeding the court shall determine the matter de novo. The department may make recommendations for appropriate remedies in these proceedings.

(b) This section shall not be construed or interpreted to limit the discretion of local governing boards, or voluntary associations formed or maintained pursuant to subdivision (b) of Section 35179, in any policy, program, or activity that is in compliance with state and federal law.

(c) The state law with which the policies of school districts, associations, or consortia of school districts, and of the California Interscholastic Federation, concerning interscholastic athletics, are required to comply, in accordance with this section, includes, but is not limited to, any regulations issued by the State Board of Education pursuant to Section 232 with regard to sex discrimination in interscholastic athletics.

(d) 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. 4. Section 35179 of the Education Code is amended to read:

35179. (a) Each school district governing board shall have general control of, and be responsible for, all aspects of the interscholastic athletic policies, programs, and activities in its district, including, but not limited to, eligibility, season of sport, number of sports, personnel, and sports facilities. In addition, the board shall assure that all interscholastic policies, programs, and activities in its district are in compliance with state and federal law.

(b) Governing boards may enter into associations or consortia with other boards for the purpose of governing regional or statewide interscholastic athletic programs by permitting the public schools under their jurisdictions to enter into a voluntary association with other schools for the purpose of enacting and enforcing rules relating to eligibility for, and participation in, interscholastic athletic programs among and between schools.

(c) Each governing board, or its designee, shall represent the individual schools located within its jurisdiction in any voluntary association of schools formed or maintained pursuant to this section.

(d) No voluntary interscholastic athletic association, of which any public school is a member, shall discriminate against, or deny the benefits of any program to, any person on the basis of race, sex, or ethnic origin.

(e) Interscholastic athletics is defined as those policies, programs, and activities that are formulated or executed in conjunction with, or in contemplation of, athletic contests between two or more schools, either public or private.

(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.

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## CHAPTER 889

An act to amend Sections 33353, 33354, and 35179 of the Education Code, relating to educational programs and activities.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 33353 of the Education Code is amended to read:

33353. (a) The California Interscholastic Federation is a voluntary organization that consists of school and school related personnel with responsibility for administering interscholastic athletic activities in secondary schools. It is the intent of the Legislature that the California Interscholastic Federation, in consultation with the State Department of Education, implement the following policies:

(1) Give the governing boards of school districts specific authority to select their athletic league representatives.

(2) Require that all league, section, and state meetings affiliated with the California Interscholastic Federation be subject to the notice and hearing requirements of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code).

(3) Establish a neutral final appeals body to hear complaints related to interscholastic athletic policies.

(4) Provide information to parents and pupils regarding the state and federal complaint procedures for discrimination complaints arising out of interscholastic athletic activities.

(b) The California Interscholastic Federation shall report to the Legislature and the Governor on its evaluation and accountability activities undertaken pursuant to this section on or before January 1, 2005.

(c) 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. Section 33354 of the Education Code is amended to read:

33354. (a) The State Department of Education shall have the following authority over interscholastic athletics:

(1) The department may state that the policies of school districts, of associations or consortia of school districts, and of the California Interscholastic Federation, concerning interscholastic athletics, are in compliance with both state and federal law.

(2) (A) If the department states that a school district, an association, or consortium of school districts, or the California Interscholastic Federation is not in compliance with state or federal law, the department may require the school district, association, or consortium, or the federation to adjust its policy so that it is in compliance. However, the department shall not have authority to determine the specific policy that a school district, must adopt in order to comply with state and federal laws.

(B) Notwithstanding any other provision of law, a complainant from a public school who wishes to file a discrimination complaint pursuant to the regulations adopted for the purpose of implementing Section 261 based on interscholastic activities conducted by an association, a consortium of school districts, or by the California Interscholastic Federation, shall not be required to first file a discrimination complaint with a school district, and may file an initial discrimination complaint directly with the department, and the department shall have the authority to specify, with regard to a specific discrimination complaint, the administrative remedies that such an association, a consortium of school districts, or the California Interscholastic Federation must provide in order to comply with state or federal law.

(3) If the department states that a school district, association, or consortium, or the federation is not in compliance with state or federal law in matters relating to interscholastic activities, and the school district, association, or consortium, or the federation does not change its policy in order to comply with these laws, the department may commence with appropriate legal proceedings against the California Interscholastic Federation, the school district or against school districts

that are members of the California Interscholastic Federation or the association or consortium that the department states is in noncompliance. In a legal proceeding the court shall determine the matter de novo. The department may make recommendations for appropriate remedies in these proceedings.

(b) This section shall not be construed or interpreted to limit the discretion of local governing boards, or voluntary associations formed or maintained pursuant to subdivision (b) of Section 35179, in any policy, program, or activity that is in compliance with state and federal law.

(c) The state law with which the policies of school districts, associations, or consortia of school districts, and of the California Interscholastic Federation, concerning interscholastic athletics, are required to comply, in accordance with this section, includes, but is not limited to, any regulations issued by the State Board of Education pursuant to Section 232 with regard to discrimination in interscholastic athletics.

(d) 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. Section 35179 of the Education Code is amended to read:

35179. (a) Each school district governing board shall have general control of, and be responsible for, all aspects of the interscholastic athletic policies, programs, and activities in its district, including, but not limited to, eligibility, season of sport, number of sports, personnel, and sports facilities. In addition, the board shall assure that all interscholastic policies, programs, and activities in its district are in compliance with state and federal law.

(b) Governing boards may enter into associations or consortia with other boards for the purpose of governing regional or statewide interscholastic athletic programs by permitting the public schools under their jurisdictions to enter into a voluntary association with other schools for the purpose of enacting and enforcing rules relating to eligibility for, and participation in, interscholastic athletic programs among and between schools.

(c) Each governing board, or its designee, shall represent the individual schools located within its jurisdiction in any voluntary association of schools formed or maintained pursuant to this section.

(d) No voluntary interscholastic athletic association, of which any public school is a member, shall discriminate against, or deny the benefits of any program to, any person on any basis prohibited by Chapter 2 (commencing with Section 200) of Part 1.

(e) Notwithstanding any other provision of law, no voluntary interscholastic athletic association shall deny a school from participating

in interscholastic athletic activities because of the religious tenets of the school, regardless of whether that school is directly controlled by a religious organization.

(f) Interscholastic athletics is defined as those policies, programs, and activities that are formulated or executed in conjunction with, or in contemplation of, athletic contests between two or more schools, either public or private.

(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.

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## CHAPTER 890

An act to amend Sections 32261, 32270, 32271, 32280, 32290, 32295, and 35294.2 of the Education Code, relating to school safety.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 32261 of the Education Code is amended to read:

32261. (a) The Legislature hereby recognizes that all pupils enrolled in the state public schools have the inalienable right to attend classes on school campuses which are safe, secure, and peaceful. The Legislature also recognizes that pupils cannot fully benefit from an educational program unless they attend school on a regular basis. In addition, the Legislature further recognizes that school crime, vandalism, truancy, and excessive absenteeism are significant problems on far too many school campuses in the state.

(b) The Legislature hereby finds and declares that the establishment of an interagency coordination system is the most efficient and long-lasting means of resolving school and community problems of truancy and crime, including vandalism, drug and alcohol abuse, gang membership, gang violence, and hate crimes.

(c) It is the intent of the Legislature in enacting this chapter to encourage California public schools to develop comprehensive safety plans that are the result of a systematic planning process, that include strategies aimed at the prevention of, and education about, potential incidents involving crime and violence on school campuses, and that address the safety concerns of local law enforcement agencies, community leaders, parents, pupils, teachers, administrators, school

police, and other school employees interested in the prevention of school crime and violence.

(d) It is the intent of the Legislature in enacting this chapter to encourage school districts, county offices of education, and law enforcement agencies to develop and implement interagency strategies, in-service training programs, and activities that will improve school attendance and reduce the rates of school crime, including vandalism, drug and alcohol abuse, gang membership, gang violence, and hate crimes.

(e) It is the intent of the Legislature in enacting this chapter that the School/Law Enforcement Partnership shall not duplicate any existing gang or drug and alcohol abuse program currently provided for schools.

SEC. 2. Section 32270 of the Education Code is amended to read:

32270. (a) From funds appropriated for that purpose, the partnership shall establish interagency safe school programs in accordance with the requirements of this article to address the problems of school safety, truancy, excessive absenteeism, and school crime including hate crimes, vandalism, drug and alcohol abuse, gang membership, and gang violence.

(b) The partnership shall select program participants from applications submitted by school districts and county offices of education. Approved applications shall include elementary school districts; high school districts; and unified school districts or county offices of education, or any combination of unified school districts or county offices, to participate in the program. In selecting program applicants, the Superintendent of Public Instruction shall ensure that the approved programs are broadly representative of the geographic and ethnic diversity of the state.

(c) The partnership shall encourage applicants for interagency school safety programs addressing the problems of drug and alcohol abuse, gang membership, and gang violence to review available materials and programs established and funded by the Drug-Free Schools and Communities Program that exists within the State Department of Education and the Office of Criminal Justice Planning's comprehensive alcohol and drug prevention education component of the Suppression of Drug Abuse in Schools program pursuant to Chapter 7 (commencing with Section 13860) of Title 6 of Part 4 of the Penal Code and the gang prevention education component of the Gang Violence Suppression program pursuant to Chapter 3.5 (commencing with Section 13826) of Title 6 of Part 4 of the Penal Code.

(d) The project period for approved programs shall not exceed three years.

(e) As used in this chapter, the term ''school district'' shall be construed to include county offices of education.

SEC. 3. Section 32271 of the Education Code is amended to read:

32271. Applications to establish interagency safe school programs shall be jointly submitted by applicant school districts and the appropriate law enforcement agencies for that district to address local school safety topics, including, but not necessarily limited to, all of the following:

(a) The reduction of school crime, including hate crimes, vandalism, drug and alcohol abuse, gang membership, and gang violence.

(b) The improvement of school attendance.

(c) The reduction of truancy rates.

(d) The reduction of school dropout rates.

(e) Other topics which impact upon school safety including, but not limited to, child abuse and strategies for parental and community education programs.

SEC. 4. Section 32280 of the Education Code is amended to read:

32280. (a) The partnership shall sponsor at least two regional conferences for school districts, county offices of education, and law enforcement agencies to identify exemplary programs and techniques that have been effectively utilized by public schools to reduce school crime, including hate crimes, vandalism, drug and alcohol abuse, gang membership and gang violence, truancy, and excessive absenteeism.

(b) Each regional conference shall include, but need not be limited to, information on all of the following topics:

(1) Interagency cooperation between schools and law enforcement agencies.

(2) School attendance.

(3) School safety.

(4) Citizenship education.

(5) Drug and alcohol abuse.

(6) Child abuse.

(7) Parental education.

SEC. 5. Section 32290 of the Education Code is amended to read:

32290. (a) The partnership shall establish statewide interagency school safety cadre for the purpose of facilitating interagency coordination among school districts, county offices of education, and law enforcement agencies to improve school attendance, encourage good citizenship, and to reduce school violence, school crime, including hate crimes, vandalism, drug and alcohol abuse, gang membership and gang violence, and truancy rates.

(b) The partnership shall appoint up to 100 professionals from education and law enforcement to the statewide cadre.

(c) The partnership shall provide training to the statewide cadre representatives to enable them to initiate and maintain interagency

school safety programs among school districts, county offices of education, and law enforcement agencies in each region.

SEC. 6. Section 32295 of the Education Code is amended to read:

32295. The partnership shall annually evaluate the programs and activities under the Interagency School Safety Demonstration Act of 1985 and shall submit a report to the Legislature which shall also be made available for public inspection, on or before January 1 of each year. The evaluation shall include, but not be limited to, all of the following:

(a) An evaluation of the appropriateness and effectiveness of regional conferences conducted pursuant to Article 3 (commencing with Section 32280).

(b) An evaluation of the extent to which the statewide interagency school safety cadre has been able to provide appropriate technical assistance to school districts, county offices of education, and law enforcement agencies.

(c) An evaluation of the extent to which interagency safe school programs have succeeded in reaching and positively affecting schools and communities sponsoring the programs by measuring all of the following:

(1) The reduction of school crime, including hate crimes, drug and alcohol abuse, gang membership, gang violence, and vandalism.

(2) The improvement of school attendance.

(3) The reduction of school truancy.

(4) The reduction of school dropout rates.

(5) Other measurements impacting on school safety.

(d) Specific recommendations regarding the methods and means through which interagency programs may be replicated and disseminated on a statewide basis.

SEC. 7. 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 discrimination and harassment policy consistent with the prohibition against discrimination contained in Chapter 2 (commencing with Section 200) of Part 1.

(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.

(J) Hate crime reporting procedures pursuant to Chapter 1.2 (commencing with Section 628) of Title 15 of Part 1 of the Penal Code.

(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.

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.

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## CHAPTER 891

An act to amend Sections 10554, 41203.1, 45023.1, 52057, 60810, 87885, 92900, and 92901 of, to add Sections 42238.146, 56836.095, 56836.158, and 56836.159 to, to add Chapter 2.5 (commencing with Section 54200) to Part 29 of, and to repeal Sections 42243.6, 42243.8, 42243.9, 42246, 42247, 42247.1, 42247.2, 42247.3, 42247.4, 42247.5, 42249, 42249.2, 42249.4, 42249.6, 42249.65, and 42249.8 of, the Education Code, to amend Item 6110-132-0001 of, and to add Item 6110-128-0001 to, Section 2.00 of the Budget Act of 2001, relating to education, making an appropriation therefor, declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

I am signing Senate Bill No. 735, however I am reducing the $98 million appropriation to the Chancellor of the California Community Colleges in Section 34(a) by a total of $66 million. Given the rapid decline in 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 reduce the level of General Fund expenditure to these programs. My Administration has strongly supported the Community College system. Last year alone I increased the Partnership for Excellence funding for Community Colleges to $300 million -- more than double the level of funding from the previous year. However, given the expected budget shortfall in the next fiscal year, if we do not make difficult decisions on expenditures for maintenance and equipment today, we will need to make even more drastic reductions in instructional programs tomorrow.

My office worked with the Chancellor's office and members of the Community College Board of Trustees to identify specific funding needs related to equipment for academic programs or safety-related deferred maintenance projects. The $32 million remaining

should provide sufficient resources to fund the most critical fire and life safety hazards and the most essential instructional materials acquisition needs of the colleges. I have also sustained the full $14.9 million requested in Section 34(b) from the 1998 Higher Education Capital Outlay Bond Fund for 34 capital outlay projects for a total of nearly $47 million.

Additionally, I am signing this bill with the understanding that clean-up language will be introduced to correct a technical error which may reduce funding for the Targeted Instructional Improvement Grant Program below the current base level.

I am revising Section 34(a) of SB 735 to conform to this action as follows:

SEC. 34. (a) (1) The sum of thirty-two million dollars ($32,000,000) is hereby appropriated, for allocation in the 2001–02 fiscal year, to the Chancellor of the California Community Colleges, in augmentation of Item 6870-101-0001 of Section 2.00 of the Budget Act of 2001, for allocation to community college districts as follows:

(A) Seventeen million dollars ($17,000,000) from the Proposition 98 Reversion Account for allocation for scheduled maintenance and special repair projects.

(C) Fifteen million dollars ($15,000,000) from the General Fund for allocation for the purchase of instructional equipment and library materials.

(2) The amount appropriated in paragraph (1) shall be allocated by the Chancellor of the California Community Colleges to community college districts for the purposes of scheduled maintenance and special repair projects and instructional equipment and library materials.

(3) The chancellor shall allocate the funding for scheduled maintenance and special repair so that, for every dollar of funds allocated pursuant to subparagraphs (A) and (B) of paragraph (1), a recipient district shall provide one dollar in matching funds. Priority for the allocation of funding provided for scheduled maintenance and special repairs shall be given to fire and life safety, seismic safety, and other critical need projects. The amounts appropriated in subparagraphs (A) and (B) of paragraph (1) shall be available for encumbrance until June 30, 2003.

(4) The chancellor shall allocate the funding for instructional equipment and library materials so that, for every three dollars of funds allocated pursuant to subparagraph (C) of paragraph (1), a recipient district shall provide one dollar in matching funds. In expending the funds provided under this section for instructional equipment and library materials, a district shall give first priority to making payments on any multiyear lease agreements.

GRAY DAVIS, Governor

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

SECTION 1. Section 10554 of the Education Code is amended to read:

10554. (a) In order for the governing board to carry out its responsibilities pursuant to this chapter, there is hereby established the Educational Telecommunication Fund. The amount of moneys to be deposited in the fund shall be the amount of any offset made to the principal apportionments made pursuant to Sections 1909, 2558, 42238, 52616, Article 1.5 (commencing with Section 52335) of Chapter 9 of Part 28, and Chapter 7.2 (commencing with Section 56836) of Part 30, based on a finding that these apportionments were not in accordance with law. The maximum amount that may be annually deposited in the fund from the offset shall be fifteen million dollars ($15,000,000). The

Controller shall establish an account to receive and expend moneys in the fund. The placement of the moneys in the fund shall occur only upon a finding by the Superintendent of Public Instruction and the Director of Finance that the principal apportionments made pursuant to Sections 1909, 2558, 42238, 52616, and Article 1.5 (commencing with Section 52335) of Chapter 9 of Part 28, and Chapter 7.2 (commencing with Section 56836) of Part 30 were not in accordance with existing law and were so identified pursuant to Sections 1624, 14506, 41020, 41020.2, 41320, 42127.2, and 42127.3, or an independent audit that was approved by the State Department of Education.

(b) Moneys in the fund established pursuant to subdivision (a) shall only be available for expenditure upon appropriation by the Legislature in the Budget Act.

(c) The moneys in the fund established pursuant to subdivision (a) may be expended by the governing board to carry out the purposes of this chapter, including for the following purposes:

(1) To support the activities of the team established pursuant to subdivision (c) of Section 10551.

(2) To assist the school districts and county superintendents of schools in purchasing both hardware and software to allow school districts, county superintendents of schools, and the State Department of Education to be linked for school business and administrative purposes. The governing board shall establish a matching share requirement that applicant school districts and county superintendents of schools must fulfill to receive those funds. It is the intent of the Legislature to encourage the distribution of grants to school districts and county superintendents of schools to the widest extent possible.

(3) To provide technical assistance through county offices of education to school districts in implementing the standards established pursuant to subdivision (a) of Section 10552.

(d) This section shall become inoperative as of January 1, 2003.

SEC. 2. Section 41203.1 of the Education Code is amended to read:

41203.1. (a) For the 1990–91 fiscal year and each fiscal year thereafter, allocations calculated pursuant to Section 41203 shall be distributed in accordance with calculations provided in this section. Notwithstanding Section 41203, and for the purposes of this section, school districts, community college districts, and direct elementary and secondary level instructional services provided by the State of California shall be regarded as separate segments of public education, and each of these three segments of public education shall be entitled to receive respective shares of the amount calculated pursuant to Section 41203 as though the calculation made pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution were to be applied separately to each segment and the base year for the purposes of this calculation

under paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution were based on the 1989–90 fiscal year. Calculations made pursuant to this subdivision shall be made so that each segment of public education is entitled to the greater of the amounts calculated for that segment pursuant to paragraph (1) or (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

(b) If the single calculation made pursuant to Section 41203 yields a guaranteed amount of funding that is less than the sum of the amounts calculated pursuant to subdivision (a), then the amount calculated pursuant to Section 41203 shall be prorated for the three segments of public education.

(c) Notwithstanding any other provision of law, this section shall not apply to the fiscal years between the 1992–93 fiscal year and the 2001–02 fiscal year, inclusive.

SEC. 3. Section 42238.146 is added to the Education Code, to read:

42238.146. Notwithstanding any other provision of law, for purposes of Sections 14002, 14004, and 41301, for the 2000–01 fiscal year and each fiscal year thereafter, the Superintendent of Public Instruction shall certify to the Controller amounts that do not exceed the amounts needed to fund the revenue limits of school districts, as determined pursuant to Section 42238, the revenue limits of county superintendents of schools, as determined pursuant to Section 2558, and the revenue limit portion of charter school operational funding, as determined pursuant to Section 47633.

SEC. 4. Section 42243.6 of the Education Code is repealed.

SEC. 5. Section 42243.8 of the Education Code is repealed.

SEC. 6. Section 42243.9 of the Education Code is repealed.

SEC. 7. Section 42246 of the Education Code is repealed.

SEC. 8. Section 42247 of the Education Code is repealed.

SEC. 9. Section 42247.1 of the Education Code is repealed.

SEC. 10. Section 42247.2 of the Education Code is repealed.

SEC. 11. Section 42247.3 of the Education Code is repealed.

SEC. 12. Section 42247.4 of the Education Code is repealed.

SEC. 13. Section 42247.5 of the Education Code is repealed.

SEC. 14. Section 42249 of the Education Code is repealed.

SEC. 15. Section 42249.2 of the Education Code is repealed.

SEC. 16. Section 42249.4 of the Education Code is repealed.

SEC. 17. Section 42249.6 of the Education Code is repealed.

SEC. 18. Section 42249.65 of the Education Code is repealed.

SEC. 19. Section 42249.8 of the Education Code is repealed.

SEC. 20. Section 45023.1 of the Education Code is amended to read:

45023.1. (a) Commencing with the 2000–01 fiscal year, the governing board of a school district, the county superintendent of schools, or the county board of education may increase, for teachers meeting the requirements prescribed by this section, the salary on its adopted certificated employee salary schedule as provided in subdivision (b). For purposes of this section, any teacher for whom the governing board, county superintendent of schools, or county board of education may increase salaries shall meet all of the following criteria:

(1) Hold a valid California teaching credential, not including an emergency permit, intern certificate or credential, or waiver.

(2) Possess a baccalaureate or higher degree.

(3) Receive a salary paid through the general fund of the district or county office.

(b) The governing board, county superintendent of schools, or county board of education that increases its salaries pursuant to subdivision (a) shall perform the following computations:

(1) The governing board, county superintendent of schools, or county board of education shall designate as the lowest salary on the salary schedule for a certificated employee meeting the criteria in subdivision (a) an amount that is at least an annual salary of thirty-four thousand dollars ($34,000) in the 2000–01 fiscal year.

(2) The governing board, county superintendent of schools, or county board of education shall increase to the annual salary amount in paragraph (1) the salary of any certificated employee meeting the criteria in subdivision (a) whose salary on the salary schedule for the 1999–2000 fiscal year was less than the amount computed in paragraph (1) and, notwithstanding Section 45028, shall incorporate that increase into the salary schedule commencing with the 2000–01 fiscal year.

(c) Each school district or county office of education that increases its beginning teacher annual minimum salary to thirty-four thousand dollars ($34,000) pursuant to subdivision (b) shall elect, except as provided in subdivision (j), to receive reimbursement for the cost of the increase pursuant to only one of the following two options:

(1) Option One:

(A) In fiscal year 2000–01, a school district, county superintendent of schools, or county office of education that increases salaries pursuant to paragraph (2) of subdivision (b) and selects reimbursement Option One shall receive an amount equal to six dollars ($6) times the district's or county office's second principal apportionment average daily attendance for the 1999–2000 fiscal year, excluding attendance in adult education programs and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(B) Divide the amount received from the state pursuant to subparagraph (A) for the 2000–01 fiscal year by the school district or county office of education second principal apportionment average daily attendance for the 1999–2000 fiscal year, excluding attendance in adult education programs and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(C) For the 2001–02 fiscal year and each fiscal year thereafter, for each school district that increases its salaries pursuant to subdivision (a), the Superintendent of Public Instruction shall sum the results of paragraphs (i) and (ii) and add that figure to the total school district revenue limit computed pursuant to Section 42238:

(i) Annually increase the funding rate per unit of average daily attendance specified in subparagraph (B) by the percentage increase pursuant to subdivision (b) of Section 42238.1 and multiply the resulting product by the school district's second principal apportionment average daily attendance for the current fiscal year excluding attendance in regional occupational centers/programs, adult education programs, and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(ii) Annually increase the funding rate per unit of average daily attendance specified in subparagraph (B) by the percentage increase pursuant to subdivision (b) of Section 42238.1 and multiply the resulting product by the school district's second principal apportionment average daily attendance for the current fiscal year in regional occupational centers/programs excluding attendance in charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(D) For the 2001–02 fiscal year and each fiscal year thereafter, for each county office of education that increases its salaries subdivision (a), the Superintendent of Public Instruction shall add the sum of paragraphs (i) and (ii) to the county office of education revenue limit computed pursuant to Section 2550:

(i) Annually increase the funding rate per unit of average daily attendance specified in subparagraph (B) by the percentage increase identified pursuant to Section 2557 and multiply the resulting product by the county office of education's second principal apportionment average daily attendance for the current fiscal year excluding attendance in regional occupational centers/programs, adult education programs, and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(ii) Annually increase the funding rate per unit of average daily attendance specified in subparagraph (B) by the percentage increase

identified pursuant to Section 2557 and multiply the resulting product by the county office of education's second principal apportionment average daily attendance for the current fiscal year in regional occupational centers/programs excluding attendance in charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(E) The school district, county superintendent of schools, or county office of education shall utilize these incentive funds not only to meet the new beginning teacher annual minimum salary of thirty-four thousand dollars ($34,000), but may also use the funds to generally enhance teachers' salaries in order to achieve the goals of retention of qualified, competent, and experienced teachers and the attainment of a reasonable salary commensurate with a teacher's experience, education, and responsibilities.

(2) Option Two: A school district, county superintendent of schools, or county office of education may submit a request to the Superintendent of Public Instruction, on a form supplied by the Superintendent of Public Instruction, for state funding computed as follows:

(A) Total the salaries of all certificated employees receiving increased salaries up to a maximum of thirty-four thousand dollars ($34,000) per person pursuant to subdivision (b) for the 2000–01 fiscal year.

(B) Total all salaries, based on the salary schedule for the 2000–01 fiscal year before the increase made pursuant to subdivision (b), of all certificated employees receiving increased salaries pursuant to subdivision (b).

(C) Subtract the amount in subparagraph (B) from the amount in subparagraph (A).

(D) Multiply the amount in subparagraph (C) by the district's statutory benefit rates.

(E) For the 2000–01 fiscal year, a school district, county superintendent of schools, or county office of education that increases salaries pursuant to paragraph (2) of subdivision (b) and selects reimbursement Option Two shall receive the sum of paragraphs (C) and (D).

(F) Divide the sum of the amounts received pursuant to paragraphs (C) and (D) for the 2000–01 fiscal year by the school district and county office of education average daily attendance for the second principal apportionment for the 2000–01 fiscal year, excluding attendance in adult education programs and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(G) For the 2001–02 fiscal year and each fiscal year thereafter, for each school district that increases its salaries pursuant to subdivision (a),

the Superintendent of Public Instruction shall sum the results of paragraphs (i) and (ii) and add that figure to the total school district revenue limit computed pursuant to Section 42238:

(i) Annually increase the funding rate per unit of average daily attendance calculated pursuant to subparagraph (F) by the percentage increase pursuant to subdivision (b) of Section 42238.1 and multiply the resulting product by the school district's second principal apportionment average daily attendance for the current fiscal year excluding attendance in regional occupational centers/programs, adult education programs, and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(ii) Annually increase the funding rate per unit of average daily attendance calculated pursuant to subparagraph (F) by the percentage increase pursuant to subdivision (b) of Section 42238.1 and multiply the resulting product by the school district's second principal apportionment average daily attendance for the current fiscal year in regional occupational centers/programs excluding attendance in charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(H) For the 2001–02 fiscal year and each fiscal year thereafter, for each county office of education that increases its salaries subdivision (a), the Superintendent of Public Instruction shall add the sum of paragraphs (i) and (ii) to the county office of education revenue limit computed pursuant to Section 2550:

(i) Annually increase the funding rate per unit of average daily attendance calculated pursuant to subparagraph (F) by the percentage increase identified pursuant to Section 2557 and multiply the resulting product by the county office of education's second principal apportionment average daily attendance for the current fiscal year excluding attendance in regional occupational centers/programs, adult education programs, and charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(ii) Annually increase the funding rate per unit of average daily attendance calculated pursuant to subparagraph (F) by the percentage increase identified pursuant to Section 2557 and multiply the resulting product by the county office of education's second principal apportionment average daily attendance for the current fiscal year in regional occupational centers/programs excluding attendance in charter schools participating in the charter school block grant pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(d) Any state funds received pursuant to this section and not used pursuant to the conditions of this section shall be returned to the state.

(e) If the funds requested by the school districts, the county superintendents of schools, and the county offices of education for the 2000–01 fiscal year exceed the state appropriation for this section, the Superintendent of Public Instruction shall reduce all requests by the application of a single, common percentage factor for apportionment purposes, so as not to exceed the amount appropriated for this purpose.

(f) A school district or county office of education shall receive reimbursement pursuant to subdivision (c) only. However, this section does not prohibit a school district and its employees from negotiating salary schedules.

(g) The adjustments to school district and county office of education revenue limits prescribed in subparagraphs (C) and (D) of paragraph (1) of subdivision (c) and subparagraphs (G) and (H) of paragraph (2) of subdivision (c), respectively, shall continue so long as the increase in the salary schedule made pursuant to paragraph (2) of subdivision (b) or subdivision (i) is maintained.

(h) The Superintendent of Public Instruction shall issue appropriate forms to school districts and county offices of education no later than September 1, 2000. School districts, county superintendents of schools, or county offices of education shall notify the Superintendent of Public Instruction no later than September 30, 2001, regarding which option they wish to exercise for the 2000–01 fiscal year. School districts, county superintendents of schools, or county offices of education shall file their claim form for state funds with the Superintendent of Public Instruction no later than September 30, 2001.

(i) Adjustments made to school district or county office of education revenue limits pursuant to subparagraphs (C) and (D) of paragraph (1) of subdivision (c) and subparagraphs (G) and (H) of paragraph (2) of subdivision (c), respectively, shall not be considered part of the base revenue limit for the purpose of computing equalization adjustments or determining other wealth-related differences in school funding.

(j) Notwithstanding subdivision (c), a school district or county office of education that already has as the annual minimum salary for beginning teachers who meet the criteria in subdivision (a) in an amount equal to or greater than thirty-four thousand dollars ($34,000) shall be eligible to receive reimbursement pursuant to Option One.

SEC. 21. Section 52057 of the Education Code is amended to read:

52057. (a) The State Board of Education shall establish a Governor's Performance Award Program to provide monetary and nonmonetary awards to schools that meet or exceed API performance growth targets established pursuant to Section 52052, and demonstrate comparable improvement in academic achievement by all numerically significant ethnic and socioeconomically disadvantaged subgroups within schools. Monetary awards shall be awarded only to schools

whose API scores meet or exceed their API growth target as established pursuant to Section 52052 or increase by five points, whichever is greater, and in which all numerically significant subgroups' scores meet or exceed 80 percent of the school's API growth target as established pursuant to Section 52052 or increase by four points, whichever is greater. For purposes of this section, an ethnic or socioeconomically disadvantaged subgroup of at least 100 pupils constitutes a numerically significant subgroup, even if the subgroup does not constitute 15 percent of the total enrollment at a school.

(b) All schools, including schools participating in the Immediate Intervention/Underperforming Schools Program are eligible to participate in the Governor's Performance Award Program. The manner and form in which the monetary and nonmonetary awards are given shall be established by the Superintendent of Public Instruction and approved by the State Board of Education. The monetary awards shall be made available on either a per pupil or per school basis, not to exceed one hundred fifty dollars ($150) per pupil who received a score on the assessments described in subdivision (b) of Section 60640 and subject to funds appropriated in the annual Budget Act. A school that continues to show improvement in successive years is eligible to receive annual bonuses.

(c) In addition to or in substitution of monetary awards, the Superintendent of Public Instruction may establish, upon approval by the State Board of Education, nonmonetary awards that may include, but are not limited to, classification as a distinguished school, listing on a published public school honor roll, and public commendations by the Governor and the Legislature.

(d) A governing board of a school district or a county board of education with one or more schools under its jurisdiction that are eligible to receive an award from the Governor's Performance Award Program may request on behalf of those schools that the State Board of Education waive all or any part of any provision of this code, or any regulation adopted by the State Board of Education, controlling any of the programs listed in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 and Section 64000. The board may grant the request if the waiver does not result in a decrease in the instructional time otherwise required by law or regulation or an increase in state costs and is determined to be consistent with subdivision (a) of Section 46300. The waiver shall be granted for no more than three consecutive fiscal years. A governing board of a school district or a county board of education may request a renewal for schools under their jurisdiction that still meet the eligibility criteria.

(e) The waiver granted pursuant to subdivision (d) of Section 52057 may also provide the governing board of a school district or a county

board of education with maximum flexibility, on the part of eligible schools within the districts, in the expenditure of any new or existing categorical funds not otherwise prohibited under state or federal law to enable the school to continue improvement in pupil performance.

SEC. 22. Chapter 2.5 (commencing with Section 54200) is added to Part 29 of the Education Code, to read:

CHAPTER 2.5. TARGETED INSTRUCTIONAL IMPROVEMENT GRANT

54200. The funding for court-ordered desegregation programs and for voluntary integration programs shall be combined to form a new program, the Targeted Instructional Improvement Grant Program that is hereby established.

54201. (a) The State Department of Education shall calculate the per pupil amount that was received by each school district pursuant to the court-ordered desegregation claims filed pursuant to Sections 42243.6 and 42247, and the per pupil amount that was received based on voluntary integration claims filed pursuant to Sections 42247 and 42249 for the 2000–01 fiscal year. This amount shall be determined by dividing the total funds by the actual average daily attendance as reported on the second principal apportionment for 2000–01.

(b) The amount determined pursuant to subdivision (a) for each school district, adjusted by the percentage increase calculated pursuant to Section 42238.1, multiplied by the districts' total average daily attendance for each fiscal year shall be the total per pupil funding received for the Targeted Instructional Improvement Grant. This amount shall be adjusted annually thereafter by the percentage increase calculated pursuant to Section 42238.1.

54203. (a) A school district receiving funds pursuant to this chapter shall expend the funds to accomplish the following:

(1) To fund the costs of any court-ordered desegregation program, if the order exists and is still in force.

(2) To provide instructional improvement for the lowest achieving pupils in the district.

(b) In expending funds received pursuant to this chapter, a school district shall give first priority to funding the costs of any court-ordered desegregation program if the order exists and is still in force.

SEC. 23. Section 56836.095 is added to the Education Code, to read:

56836.095. For the 2001–02 fiscal year, the superintendent shall make the following computations in the following order:

(a) Calculate and carry out the equalization adjustments authorized pursuant to Sections 56836.12 and 56836.14.

(b) Complete the calculations required to adjust the statewide total average daily attendance pursuant to Section 56836.156, and adjust the statewide target per unit of average daily attendance for the 2001–02 fiscal year in accordance with this calculation.

(c) Determine and provide the amount of funding required for the special disabilities adjustment pursuant to Section 56836.155.

(d) Compute and distribute the amount of funding appropriated for increasing the statewide target amount per unit of average daily attendance pursuant to Section 56836.158.

(e) Compute and provide a permanent adjustment for each special education local plan area pursuant to Section 56836.159.

SEC. 24. Section 56836.158 is added to the Education Code, to read:

56836.158. (a) The superintendent shall determine the statewide total average daily attendance used for the purposes of Section 56836.08 for the 2000–01 fiscal year. For the purposes of this calculation, the 2000–01 second principal average daily attendance for the court, community school, and special education programs served by the Los Angeles County Juvenile Court and Community School/Division of Alternative Education special education local plan area shall be used in lieu of the average daily attendance used for that agency for the purposes of Section 56836.08.

(b) The Superintendent of Public Instruction shall distribute the amount appropriated for purposes of this section from the 2001-02 Budget Act. The Superintendent of Public Instruction shall divide that amount of funding by the amount calculated in subdivision (a).

(c) For each special education local plan area, the superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of Section 56836.10 for the 2001-02 fiscal year by the quotient determined pursuant to subdivision (b) of this section. This increase shall be effective beginning in the 2001–02 fiscal year.

(d) Notwithstanding subdivision (c), for the Los Angeles County Juvenile Court and Community School/Division of Alternative Education special education local plan area, the superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of Section 56836.10 by the ratio of the amount determined pursuant to subdivision (b) to the statewide target per unit of average daily attendance determined pursuant to Section 56836.11 for the 2000–01 fiscal year. This increase shall be effective beginning in the 2001–02 fiscal year.

(e) The superintendent shall increase the statewide target per unit of average daily attendance determined pursuant to Section 56836.11 for

the 2001–02 fiscal year by the amount determined pursuant to subdivision (b).

SEC. 25. Section 56836.159 is added to the Education Code, to read:

56836.159. (a) For the 2001–02 fiscal year, the superintendent shall compute a permanent adjustment for each special education local plan area as determined by this section.

(b) The superintendent shall rank each special education local plan area by its funding level per unit of average daily attendance as determined by dividing the amount calculated for each special education local plan area for the 2001–02 fiscal year pursuant to Section 56836.08 plus the amount provided to each special education local plan area pursuant to subdivision (c) of Section 56836.158 by each special education local plan area's average daily attendance upon which funding is based for the 2001–02 fiscal year pursuant to Section 56836.15.

(c) The superintendent shall increase the special education local plan areas with the lowest level of funding per unit of average daily attendance as determined in subdivision (b) to that of the special education local plan area with the next highest level of funding per unit of average daily attendance by allocating an amount from that available for this purpose from the Budget Act to the lowest level special education local plan areas. The amount to be allocated shall equal the difference between the funding level per unit of average daily attendance of the lowest level special education local plan areas and the next highest level special education local plan area multiplied by the average daily attendance upon which funding is based for the 2001–02 fiscal year pursuant to Section 56836.15 of the lowest level special education local plan areas.

(d) If there is additional funding available after the allocation pursuant to subdivision (c), the allocation pursuant to subdivision (c) shall be repeated until all the funds appropriated for this purpose in the Budget Act have been used. If the amount appropriated for the purposes of this section from the 2001–02 Budget Act is not sufficient to fully fund the allocation pursuant to subdivision (c), then the funding provided to each special education local plan area in the last iteration pursuant to subdivision (c) shall be prorated.

(e) The amount, if any, computed pursuant to subdivision (c) and subdivision (d) for each special education local plan area shall be a permanent increase and shall, commencing in the 2002–03 fiscal year, be included in the prior year amount determined pursuant to paragraph (2) of subdivision (b) of Section 56836.10.

SEC. 26. Section 60810 of the Education Code is amended to read:

60810. (a) (1) The Superintendent of Public Instruction shall review existing tests that assess the English language development of

pupils whose primary language is a language other than English. The tests shall include, but not be limited to, an assessment of achievement of these pupils in English reading, speaking, and written skills. The superintendent shall determine which tests, if any, meet the requirements of subdivisions (b) and (c). If any existing test or series of tests meets these criteria, the superintendent, with approval of the State Board of Education, shall report to the Legislature on its findings and recommendations.

(2) If no suitable test exists, the superintendent shall explore the option of a collaborative effort with other states to develop a test or series of tests and share test development costs. If no suitable test exists, the superintendent, with approval of the State Board of Education, may contract with a local education agency to develop a test or series of tests that meets the criteria of subdivisions (b) and (c) or may contract to modify an existing test or series of tests so that it will meet the requirements of subdivisions (b) and (c).

(3) Not later than August 15, 1999, the Superintendent of Public Instruction and the State Board of Education shall release a request for proposals for the development of the test or series of tests required by this subdivision. Not later than September 15, 1999, the State Board of Education shall select a contractor or contractors for the development of the test or series of tests required by this subdivision, to be available for administration during the 2000–01 school year.

(4) The Superintendent of Public Instruction shall apportion funds appropriated to enable school districts to meet the requirements of subdivision (d). The State Board of Education shall establish the amount of funding to be apportioned per test administered, based on a review of the cost per test.

(5) An adjustment to the amount of funding to be apportioned per test is not valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.

(b) The test or series of tests developed or acquired pursuant to subdivision (a) shall have sufficient range to assess pupils in kindergarten and grades 1 to 12, inclusive, in English reading, speaking, and written skills, except that pupils in kindergarten and grade 1 shall be assessed in reading and written communication only to the extent that

comparable standards and assessments in English and language arts are used for native speakers of English.

(c) The test or series of tests shall meet all of the following requirements:

(1) Provide sufficient information about pupils at each grade level to determine levels of proficiency ranging from no English proficiency to fluent English proficiency with at least two intermediate levels.

(2) Have psychometric properties of reliability and validity deemed adequate by technical experts.

(3) Be capable of administration to pupils with any primary language other than English.

(4) Be capable of administration by classroom teachers.

(5) Yield scores that allow comparison of a pupil's growth over time, can be tied to readiness for various instructional options, and can be aggregated for use in the evaluation of program effectiveness.

(6) Not discriminate on the basis of race, ethnicity, or gender.

(7) Be aligned with the standards for English language development adopted by the State Board of Education pursuant to Section 60811.

(d) The test shall be used for the following purposes:

(1) To identify pupils who are limited English proficient.

(2) To determine the level of English language proficiency of pupils who are limited English proficient.

(3) To assess the progress of limited-English-proficient pupils in acquiring the skills of listening, reading, speaking, and writing in English.

SEC. 27. Section 87885 of the Education Code is amended to read:

87885. (a) The Part-Time Faculty Office Hours Program Fund is hereby established in the State Treasury.

(b) On or before June 15 of each year, the Chancellor of the California Community Colleges shall apportion to each community college district that establishes a program pursuant to this article an amount of up to 50 percent of the total costs of compensation paid for office hours of part-time faculty, as defined in Section 87882. The chancellor shall distribute funds that are appropriated in the annual Budget Act specifically for this purpose proportionally based on each district's total costs for office hours of part-time faculty pursuant to the verification submitted by the community college district in accordance with subdivision (c) of Section 87884 for that fiscal year. In no event, however, shall the allocation to any district in a fiscal year exceed 50 percent of the total costs of the compensation paid for office hours of part-time faculty pursuant to this article.

(c) It is the intent of the Legislature that funding for the purposes of this article be included in the annual Budget Act.

SEC. 28. Section 92900 of the Education Code is amended to read:

92900. (a) The Regents of the University of California may establish four California Institutes for Science and Innovation at separate campuses of the University of California for the purpose of combining technological and scientific research and training and educating future scientists and technological leaders.

(b) Each institute shall be created pursuant to a competitive application process conducted by a panel selected by the Governor and administered by the University of California.

(c) In order to utilize the vast array of research and intellectual resources available from throughout the state, each institute may develop programs in cooperation with the private sector and with California's other public and independent colleges and universities.

(d) The concentration of each institute may include, but shall not necessarily be limited to, any of the following:

(1) Medicine.

(2) Bioengineering.

(3) Telecommunications and information systems.

(4) Energy resources.

(5) Space.

(6) Agricultural technology.

(e) Funding for the state's share of operating and facilities costs under this chapter is subject to appropriation in the annual Budget Act.

SEC. 29. Section 92901 of the Education Code is amended to read:

92901. It is the intent of the Legislature that all of the following occur:

(a) That the University of California receive seventy-five million dollars ($75,000,000) for each year for four years, for a total of three hundred million dollars ($300,000,000) for the 2000–01 fiscal year to the 2003–04 fiscal year, inclusive, for capital and operating budget purposes.

(b) That the University of California receive twenty million dollars ($20,000,000) for each of the 2001–02 and 2002–03 fiscal years and thirty million dollars ($30,000,000) for each of the 2003–04 and 2004–05 fiscal years, for a total of one hundred million dollars ($100,000,000) for capital and operating budget purposes.

(c) That a portion of the funds referenced in subdivisions (a) and (b) be available, in an amount not to exceed 5 percent of the annual appropriation, for annual operating budget expenditures. Upon completion of each project, the level of ongoing funding for the operating budget of the institutes will be determined by the Governor and the Legislature through the annual budget process.

(d) That the University of California will not seek further state funding for capital outlay associated with these four institutes beyond

that provided within the four hundred million dollar ($400,000,000) total.

(e) Every dollar of state funds appropriated for these institutes shall be matched by at least two dollars ($2) of nonstate funds, including, but not necessarily limited to, federal and private funds.

SEC. 30. Item 6110-128-0001 is added to Section 2.00 of the Budget Act of 2001, to read:

| | | |
|---|---|---|
| 6110–128–0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.30.070–Economic Impact Aid | | 465,623,000 |
| Schedule: | | |
| (a) 10.30.070.001–Article 2 (commencing with Section 54020) of Chapter 1 of Part 29 of the Education Code | 325,935,000 | |
| (b) 10.30.070.020–Sections 54031 and 54033, and Article 4 (commencing with Section 54040) of Chapter 1 of Part 29, of the Education Code | 139,688,000 | |
| Provisions: | | |
| 1. If the funds appropriated in this item are insufficient to fully fund the allocations under Article 4 (commencing with Section 54040) of Chapter 1 of Part 29 of the Education Code, the Superintendent of Public Instruction shall prorate the allocations made pursuant to that article to reflect the amount of funding available. | | |
| 2. Of the funds appropriated in this item, $21,346,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 5.0 percent and $17,348,000 is for the purpose of providing a cost-of-living-adjustment (COLA) at a rate of 3.87 percent. | | |

SEC. 31. Item 6110-132-0001 of Section 2.00 of the Budget Act of 2001 is amended to read:

6110–132–0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Targeted Instruction Improvement Grant pursuant to legislation enacted during the 2001–02 Regular Session . . . . . 713,360,000

SEC. 32. Notwithstanding Section 42238.1 of the Education Code or any other provision of law, the cost-of-living adjustment for Items 6110-104-0001, 6110-105-0001, 6110-156-0001, 6110-158-0001, 6110-161-0001, 6110-185-0001, 6110-186-0001, 6110-190-0001, 6110-196-0001, 6110-234-0001, and 6110-235-0001 of Section 2.00 of the Budget Act of 2001, and those items identified in subdivision (b) of Section 12.40 of the Budget Act of 2001 and the amount appropriated for the purposes of Section 42243.7 of the Education Code for the 2001–02 fiscal year shall be 3.87 percent. All funds appropriated in the items identified in this section are in lieu of the amounts that would otherwise be appropriated pursuant to any other provision of law.

SEC. 33. The amount of forty million dollars ($40,000,000) is hereby appropriated from the Proposition 98 Reversion Account to the Superintendent of Public Instruction for the purposes of Section 42238.44 of the Education Code.

SEC. 34. (a) (1) The sum of ninety-eight million dollars ($98,000,000) is hereby appropriated, for allocation in the 2001–02 fiscal year, to the Chancellor of the California Community Colleges, in augmentation of Item 6870-101-0001 of Section 2.00 of the Budget Act of 2001, for allocation to community college districts as follows:

(A) Seventeen million dollars ($17,000,000) from the Proposition 98 Reversion Account for allocation for scheduled maintenance and special repair projects.

(B) Thirty-two million dollars ($32,000,000) from the General Fund for allocation for scheduled maintenance and special repair projects.

(C) Forty-nine million dollars ($49,000,000) from the General Fund for allocation for the purchase of instructional equipment and library materials.

(2) The amount appropriated in paragraph (1) shall be allocated by the Chancellor of the California Community Colleges to community college districts for the purposes of scheduled maintenance and special repair projects and instructional equipment and library materials.

(3) The chancellor shall allocate the funding for scheduled maintenance and special repair so that, for every dollar of funds allocated pursuant to subparagraphs (A) and (B) of paragraph (1), a recipient district shall provide one dollar in matching funds. Priority for the allocation of funding provided for scheduled maintenance and special

repairs shall be given to fire and life safety, seismic safety, and other critical need projects. The amounts appropriated in subparagraphs (A) and (B) of paragraph (1) shall be available for encumbrance until June 30, 2003.

(4) The chancellor shall allocate the funding for instructional equipment and library materials so that, for every three dollars of funds allocated pursuant to subparagraph (C) of paragraph (1), a recipient district shall provide one dollar in matching funds. In expending the funds provided under this section for instructional equipment and library materials, a district shall give first priority to making payments on any multiyear lease agreements.

(b) The sum of fourteen million eight hundred fifty-nine thousand dollars ($14,859,000) is hereby appropriated from the 1998 Higher Education Capital Outlay Bond Fund to the Board of Governors of the California Community Colleges, in augmentation of Item 6870-301-0574 of Section 2.00 of the Budget Act of 2001, for allocation to community college districts in the 2001–02 fiscal year as follows:

(1) Three hundred seventeen thousand dollars ($317,000) to the Allan Hancock Community College District for Allan Hancock College, Project 40.02.112- Library/Media Tech Center-preliminary plans.

(2) Five hundred ninety-seven thousand dollars ($597,000) to the Butte Community College District for Butte College, Project 40.05.106-Learning Resource Center-preliminary plans.

(3) One million two hundred forty-four thousand dollars ($1,244,000) to the Contra Costa Community College District for all of the following:

(A) One hundred sixty-two thousand dollars ($162,000) for Diablo Valley College, Project 40.13.220-Life Science Remodel for Laboratories-preliminary plans.

(B) Three hundred fifty-nine thousand dollars ($359,000) to Los Medanos College, Project 40.13.313-Learning Resource Center-preliminary plans.

(C) Seven hundred twenty-three thousand dollars ($723,000) to the San Ramon Valley Center, Project 40.13.400-Phase 1 Buildings-preliminary plans.

(4) One million six hundred fifty-six thousand dollars ($1,656,000) to the Foothill-DeAnza Community College District for Foothill College, Project 40.15.206-Center for Innovation and Interactive Learning-equipment.

(5) Three hundred forty thousand dollars ($340,000) to the Glendale Community College District for Glendale College, Project 40.18.122-Allied Health/Aviation Lab-preliminary plans.

(6) Nine hundred forty thousand dollars ($940,000) to the Grossmont-Cuyamaca Community College District for both of the following:

(A) Five hundred forty-three thousand dollars ($543,000) for Cuyamaca College, Project 40.19.116-Science and Technology Mall-preliminary plans.

(B) Three hundred ninety-seven thousand dollars ($397,000) for Grossmont College, Project 40.19.207-Science Building-preliminary plans.

(7) Seven hundred thirty-eight thousand dollars ($738,000) to the Hartnell Community College District for Hartnell College, Project 40.20.101- Library/Learning Resource Center-preliminary plans.

(8) Four hundred seven thousand dollars ($407,000) to the Lake Tahoe Community College District for Lake Tahoe Community College, Project 40.23.111- Learning Resource Center-preliminary plans.

(9) One million four hundred six thousand dollars ($1,406,000) to the Los Angeles Community College District for all of the following:

(A) Three hundred thousand dollars ($300,000) for Los Angeles Mission College, Project 40.26.408-Child Development Center-preliminary plans.

(B) Two hundred thirty thousand dollars ($230,000) for Los Angeles Southwest College, Project 40.26.607-Child Development Center-preliminary plans.

(C) Two hundred fifteen thousand dollars ($215,000) for Los Angeles Trade-Tech College, Project 40.26.702-Child Development Center-preliminary plans.

(D) Six hundred sixty-one thousand dollars ($661,000) for Los Angeles Valley College, Project 40.26.803-Health Science Building-preliminary plans.

(10) Three hundred forty-three thousand dollars ($343,000) to the Los Rios Community College District for American River College, Project 40.27.102-Learning Resource Center Expansion.

(11) Six hundred fifty thousand dollars ($650,000) to the North Orange Community College District for Cypress College, Project 40.36.100-Library/Learning Resource Center-preliminary plans.

(12) Two hundred ninety-two thousand dollars ($292,000) to the Palo Verde Community College District for Palo Verde College, Project 40.37.102-Technology Building Phase 2-preliminary plans.

(13) Two hundred twenty-five thousand dollars ($225,000) to the Rancho Santiago Community College District for Santa Ana College, Project 40.41.124-Physical Education Seismic Replacement/Expansion-preliminary plans.

(14) One hundred forty-three thousand dollars ($143,000) to the Riverside Community College District for both of the following:

(A) Sixty-seven thousand dollars ($67,000) for the Moreno Valley Center, Project 40.44.207-Child Development Center-preliminary plans.

(B) Seventy-six thousand dollars ($76,000) for the Norco Valley Center, Project 40.44.307-Child Development Center-preliminary plans.

(15) One million five hundred twenty-four thousand dollars ($1,524,000) to the San Francisco Community College District for both of the following:

(A) One hundred ninety thousand dollars ($190,000) for the Mission Center, Project 40.48.106-Mission Center Building-working drawings.

(B) One million three hundred thirty-four thousand dollars ($1,334,000) for the Chinatown Center, Project 40.48.108-Chinatown Campus Building-preliminary plans.

(16) Four hundred seventy-two thousand dollars ($472,000) to the San Luis Obispo County Community College District for Cuesta College, Project 40.51.112-Theater Arts Building-preliminary plans.

(17) One hundred sixty-three thousand dollars ($163,000) to the Santa Barbara Community College District for Santa Barbara City College, Project 40.53.120-Gymnasium Remodel-preliminary plans.

(18) Four hundred seventy-one thousand dollars ($471,000) to the Sequoias Community College District for the College of the Sequoias, Project 40.56.112-Science Center-preliminary plans.

(19) Two hundred forty-five thousand dollars ($245,000) to the Shasta-Tehama Trinity Joint Community College District for Shasta College, Project 40.57.103-Library Addition-preliminary plans.

(20) One million one hundred ninety-nine thousand dollars ($1,199,000) to the Sonoma County Community College District for Santa Rosa Junior College, Project 40.61.402-Learning Resource Center-preliminary plans.

(21) Four hundred sixty-one thousand dollars ($461,000) to the Chabot-Las Positas Community College District for Las Positas College, Project 40.62.215-Physical Education, Gymnasium Phase 1-preliminary plans.

(22) Two hundred twenty-seven thousand dollars ($227,000) to the Southwestern Community College District for Southwestern College, Project 40.63.104-Child Development Center-preliminary plans.

(23) One hundred eighty-seven thousand dollars ($187,000) to the State Center Community College District for Reedley College, Project 40.64.400-Learning Resource Center Addition-preliminary plans.

(24) One hundred one thousand dollars ($101,000) to the Ventura County Community College District for Moorpark College, Project 40.65.109-Child Development Center-preliminary plans.

(25) Two hundred ninety-eight thousand dollars ($298,000) to the West Hills Community College District for the Kings County Center, Project 40.67.204-Phase 2B Classroom/Laboratories-preliminary plans.

(26) Two hundred thirteen thousand dollars ($213,000) to the West Valley Mission Community College District for Mission College, Project 40.69.208-Main Building 3rd floor Reconstruction-preliminary plans.

SEC. 35. It is the intent of the Legislature that the California Community Colleges receive greater than one-third of any future capital outlay bond funds dedicated to higher education.

SEC. 36. For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the amounts appropriated by Section 30 and subparagraphs (B) and (C) of paragraph (1) of subdivision (a) of Section 34 of this act shall be deemed to be General Fund revenues appropriated for school districts or community college districts, as defined 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.

SEC. 37. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To make the necessary changes in order to provide adequate funding for the purpose of public education and to restore critical funding for scheduled maintenance, instructional equipment, and capital outlay for the California, Community Colleges during the 2001–02 academic year, it is necessary that this act take effect immediately.

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## CHAPTER 892

An act to amend Sections 47605 and 47612.5 of, and to add Sections 47614.5, 47616.7, and 47634.2 to, the Education Code, relating to charter schools.

[Approved by Governor October 13, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 47605 of the Education Code is amended to read:

47605. (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

(2) In the case of a petition for the establishment of a charter school through the conversion of an existing public school, that would not be eligible for a loan pursuant to subdivision (b) of Section 41365, the petition may be circulated by any one or more persons seeking to establish the converted charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California

educational system and that establishment of charter schools should be encouraged. A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an ''educated person'' in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(B) The measurable pupil outcomes identified for use by the charter school. ''Pupil outcomes,'' for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the school.

(F) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(G) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(H) Admission requirements, if applicable.

(I) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall on a regular basis consult with their parents and teachers regarding the school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing

pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the State Board of Education.

(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to either the county board of education or directly to the State Board of Education. The county board of education or the State Board of Education, as the case may be, shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file

a petition for establishment of a charter school with the State Board of Education.

(2) In assuming its role as a chartering agency, the State Board of Education shall develop criteria to be used for the review and approval of charter school petitions presented to the State Board of Education. The criteria shall address all elements required for charter approval, as identified in subdivision (b) of Section 47605 and shall define ''reasonably comprehensive'' as used in paragraph (5) of subdivision (b) of Section 47605 in a way that is consistent with the intent of the Charter Schools Act of 1992. Upon satisfactory completion of the criteria, the State Board of Education shall adopt the criteria on or before June 30, 2001.

(3) A charter school for which a charter is granted by either the county board of education or the State Board of Education pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(4) If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district, to deny a petition shall, thereafter, be subject to judicial review.

(5) The State Board of Education shall adopt regulations implementing this subdivision.

(6) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition to the State Board of Education.

(k) (1) The State Board of Education may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local education agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the State Board of Education.

(3) A charter school that has been granted its charter by the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the school's petition for renewal, the school may petition the State Board of Education for renewal of its charter.

(*l*) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

SEC. 1.5. Section 47605 of the Education Code is amended to read:

47605. (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

(2) In the case of a petition for the establishment of a charter school through the conversion of an existing public school, that would not be eligible for a loan pursuant to subdivision (b) of Section 41365, the petition may be circulated by any one or more persons seeking to establish the converted charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided,

however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an ''educated person'' in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(B) The measurable pupil outcomes identified for use by the charter school. ''Pupil outcomes,'' for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the school.

(F) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement

that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(G) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(H) Admission requirements, if applicable.

(I) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall on a regular basis consult with their parents and teachers regarding the school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall

adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the State Board of Education.

(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to either the county board of education or directly to the

State Board of Education. The county board of education or the State Board of Education, as the case may be, shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education.

(2) In assuming its role as a chartering agency, the State Board of Education shall develop criteria to be used for the review and approval of charter school petitions presented to the State Board of Education. The criteria shall address all elements required for charter approval, as identified in subdivision (b) of Section 47605 and shall define ''reasonably comprehensive'' as used in paragraph (5) of subdivision (b) of Section 47605 in a way that is consistent with the intent of the Charter Schools Act of 1992. Upon satisfactory completion of the criteria, the State Board of Education shall adopt the criteria on or before June 30, 2001.

(3) A charter school for which a charter is granted by either the county board of education or the State Board of Education pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(4) If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district, to deny a petition shall, thereafter, be subject to judicial review.

(5) The State Board of Education shall adopt regulations implementing this subdivision.

(6) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition to the State Board of Education.

(k) (1) The State Board of Education may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local education agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the State Board of Education.

(3) A charter school that has been granted its charter by the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the

governing board of the school district that initially denied the charter. If the governing board of the school district denies the school's petition for renewal, the school may petition the State Board of Education for renewal of its charter.

(*l*) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

(m) A charter school shall transmit a copy of its annual, independent, financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to its chartering entity and the State Department of Education by December 15 of each year. This subdivision shall not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.

SEC. 2. Section 47612.5 of the Education Code is amended to read:

47612.5. (a) Notwithstanding any other provision of law, 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 and except to the extent inconsistent with this section and Section 47634.2, 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 this 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) (1) Notwithstanding any other provision of law and except as provided in paragraph (1) of subdivision (d), a charter school that has an approved charter may receive funding for nonclassroom-based

instruction only if a determination for funding is made pursuant to Section 47634.2 by the State Board of Education. The determination for funding shall be subject to any conditions or limitations the State Board of Education may prescribe. The State Board of Education shall adopt regulations on or before February 1, 2002, that define and establish general rules governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of nonclassroom-based instruction by charter schools offering nonclassroom-based instruction other than the nonclassroom-based instruction allowed by paragraph (1) of subdivision (d). Nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education. In prescribing any conditions or limitations relating to the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (*l*) of Section 47605.

(2) Except as provided in paragraph (2) of subdivision (b) of Section 47634.2, a charter school that receives a determination pursuant to subdivision (b) of Section 47634.2 is not required to reapply annually for a funding determination of its nonclassroom-based instruction program if an update of the information the State Board of Education reviewed when initially determining funding would not require material revision, as that term is defined in regulations adopted by the board. Notwithstanding any provision of law, the State Board of Education may require a charter school to provide updated information at any time it determines that a review of that information is necessary. The State Board of Education may terminate a determination for funding if updated or additional information requested by the board is not made available to the board by the charter school within a reasonable amount of time or if the information otherwise supports termination. A determination for funding pursuant to Section 47634.2 may not exceed five years.

(3) A charter school that offers nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (d) is subject to the determination for funding requirement of Section 47634.2 to receive funding each time its charter is renewed or materially revised pursuant to Section 47607. A charter school that materially revises its charter to offer nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (d) is subject to the determination for funding requirement of Section 47634.2.

(d) (1) Notwithstanding any other provision of law, and as a condition of apportionment, ''classroom-based instruction'' in a charter school, for the purposes of this part, occurs only when charter school pupils are engaged in educational activities required of those pupils and are under the immediate supervision and control of an employee of the

charter school who possesses a valid teaching certification in accordance with subdivision (*l*) of Section 47605. For purposes of calculating average daily attendance for classroom-based instruction apportionments, at least 80 percent of the instructional time offered by the charter school shall be at the schoolsite, and the charter school shall require the attendance of all pupils for whom a classroom-based apportionment is claimed at the schoolsite for at least 80 percent of the minimum instructional time required to be offered pursuant to paragraph (1) of subdivision (a) of Section 47612.5.

(2) For the purposes of this part, ''nonclassroom instruction'' or ''nonclassroom-based instruction'' means instruction that does not meet the requirements specified in paragraph (1). The State Board of Education may adopt regulations pursuant to paragraph (1) of subdivision (c) specifying other conditions or limitations on what constitutes nonclassroom-based instruction, as it deems appropriate and consistent with this part.

(3) For purposes of this part, a schoolsite is a facility that is used principally for classroom instruction.

SEC. 2.5. 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 and except to the extent inconsistent with this section and Section 47634.2, 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 this 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.

(d) (1) Notwithstanding any other provision of law and except as provided in paragraph (1) of subdivision (e), a charter school that has an approved charter may receive funding for nonclassroom-based instruction only if a determination for funding is made pursuant to Section 47634.2 by the State Board of Education. The determination for funding shall be subject to any conditions or limitations the State Board of Education may prescribe. The State Board of Education shall adopt regulations on or before February 1, 2002, that define and establish general rules governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of nonclassroom-based instruction by charter schools offering nonclassroom-based instruction other than the nonclassroom-based instruction allowed by paragraph (1) of subdivision (e). Nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education. In prescribing any conditions or limitations relating to the qualifications of instructional personnel, the State Board of Education shall be guided by subdivision (l) of Section 47605.

(2) Except as provided in paragraph (2) of subdivision (b) of Section 47634.2, a charter school that receives a determination pursuant to subdivision (b) of Section 47634.2 is not required to reapply annually for a funding determination of its nonclassroom-based instruction program if an update of the information the State Board of Education reviewed when initially determining funding would not require material revision, as that term is defined in regulations adopted by the board. Notwithstanding any provision of law, the State Board of Education may require a charter school to provide updated information at any time it determines that a review of that information is necessary. The State Board of Education may terminate a determination for funding if updated or additional information requested by the board is not made available to the board by the charter school within a reasonable amount of time or if the information otherwise supports termination. A determination for funding pursuant to Section 47634.2 may not exceed five years.

(3) A charter school that offers nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (e) is

subject to the determination for funding requirement of Section 47634.2 to receive funding each time its charter is renewed or materially revised pursuant to Section 47607. A charter school that materially revises its charter to offer nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (e) is subject to the determination for funding requirement of Section 47634.2.

(e) (1) Notwithstanding any other provision of law, and as a condition of apportionment, ''classroom-based instruction'' in a charter school, for the purposes of this part, occurs only when charter school pupils are engaged in educational activities required of those pupils and are under the immediate supervision and control of an employee of the charter school who possesses a valid teaching certification in accordance with subdivision (*l*) of Section 47605. For purposes of calculating average daily attendance for classroom-based instruction apportionments, at least 80 percent of the instructional time offered by the charter school shall be at the schoolsite, and the charter school shall require the attendance of all pupils for whom a classroom-based apportionment is claimed at the schoolsite for at least 80 percent of the minimum instructional time required to be offered pursuant to paragraph (1) of subdivision (a) of Section 47612.5.

(2) For the purposes of this part, ''nonclassroom instruction'' or ''nonclassroom-based instruction'' means instruction that does not meet the requirements specified in paragraph (1). The State Board of Education may adopt regulations pursuant to paragraph (1) of subdivision (d) specifying other conditions or limitations on what constitutes nonclassroom-based instruction, as it deems appropriate and consistent with this part.

(3) For purposes of this part, a schoolsite is a facility that is used principally for classroom instruction.

SEC. 3. Section 47614.5 is added to the Education Code, to read:

47614.5. (a) The Charter School Facility Grant Program is hereby established and shall be administered by the State Department of Education. This grant program is intended to provide assistance with facilities rent and lease costs for pupils in charter schools.

(b) Subject to the annual Budget Act, eligible schools shall receive an amount of up to, but no more than, seven hundred fifty dollars ($750) per unit of average daily attendance, as certified at the second principal apportionment, to reimburse an amount of up to, but no more than, 75 percent of the annual facilities rent and lease costs for the charter school. In any fiscal year, if the funds appropriated for the purposes of this section by the annual Budget Act are insufficient to fund the approved amounts fully, the Superintendent of Public Instruction shall apportion the available funds on a pro rata basis.

(c) The State Department of Education shall do all of the following:

(1) Inform charter schools of this program.

(2) Upon application by a charter school, determine eligibility, based on the geographic location of the charter schoolsite. Charter schoolsites physically located in the attendance area of a public elementary school in which 70 percent or more of pupil enrollment is eligible for free or reduced price meals are eligible for funding pursuant to this section. Eligibility for funding shall not be limited to the grade level or levels served by the school whose attendance area is used to determine eligibility.

(3) Inform charter schools of their grant eligibility.

(4) Reimburse charter schools for eligible expenditures in a timely manner.

(d) Funding pursuant to this section shall not be apportioned for the following:

(1) Units of average daily attendance generated through nonclassroom-based instruction as defined by paragraph (2) of subdivision (d) of Section 47612.5 or that does not comply with conditions or limitations set forth in regulations adopted by the State Board of Education pursuant to this section.

(2) Charter schools occupying existing school district or county office of education facilities.

(3) Charter schools receiving reasonably equivalent facilities from their chartering authority pursuant to Section 47614.

(e) Funds made available pursuant to this section shall be used only for costs associated with facilities rents and leases, consistent with the definitions used in the California School Accounting Manual. These costs may include, but are not limited to, costs associated with remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, and improving sites.

(f) If the number of pupils who wish to attend a charter school that applies for and receives a grant pursuant to this section exceeds the school's capacity, preference shall be extended to pupils currently attending the charter school and pupils who reside in the elementary school attendance area in which the charter school is located.

(g) If an existing charter school located in an elementary attendance area in which less than 50 percent of pupil enrollment is eligible for free or reduced price meals relocates to an attendance area identified in paragraph (2) of subdivision (c), admissions preference shall be given to pupils who reside in the elementary school attendance area into which the charter school is relocating.

(h) For each fiscal year, the Superintendent of Public Instruction shall annually report to the State Board of Education regarding the use of any

funds that have been made available to each charter school from the grant program established pursuant to this section.

(i) It is the intent of the Legislature that ten million dollars ($10,000,000) be appropriated for the Charter School Facility Grant Program for the grants authorized under this section for the 2001–02, 2002–03, and 2003–04 fiscal years.

SEC. 4. Section 47616.7 is added to the Education Code, to read:

47616.7. The evaluation provided for in Section 47616.5 shall include an analysis of the funding system for charter schools that offer nonclassroom-based instruction. The evaluation shall also examine the effectiveness of the State Board of Education's process, as provided for in Sections 47612.5 and 47634.2, for approving funding for charter schools offering nonclassroom-based instruction.

SEC. 5. Section 47634.2 is added to the Education Code, to read:

47634.2. (a) (1) Notwithstanding any other provision of law, the amount of funding to be allocated to a charter school on the basis of average daily attendance that is generated by pupils engaged in nonclassroom-based instruction, as defined by paragraph (2) of subdivision (d) of Section 47612.5, including funding provided on the basis of average daily attendance pursuant to Sections 47613.1, 47633, 47634, and 47664, shall be adjusted by the State Board of Education. The State Board of Education shall adopt regulations setting forth criteria for the determination of funding for nonclassroom-based instruction, at a minimum the regulation shall specify that the nonclassroom-based instruction is conducted for the instructional benefit of the student and substantially dedicated to that function. In developing these criteria and determining the amount of funding to be allocated to a charter school pursuant to this section, the State Board of Education shall consider, among other factors it deems appropriate, the amount of the charter school's total budget expended on certificated employee salaries and benefits and on schoolsites, as defined in paragraph (3) of subdivision (d) of Section 47612.5, and the teacher-to-pupil ratio in the school.

(2) For the 2001–02 fiscal year only, the amount of funding determined by the State Board of Education pursuant to this section shall not be less than 90 percent of the unadjusted amount to which a charter school would otherwise be entitled on the basis of average daily attendance.

(3) For the 2002-03 fiscal year, the amount of funding determined by the State Board of Education pursuant to this section shall not be more than 80 percent of the unadjusted amount to which a charter school would otherwise be entitled, unless the State Board of Education determines that a greater or lesser amount is appropriate based on the criteria specified in paragraph (1) of subdivision (a).

(4) For the 2003–04 fiscal year and each fiscal year thereafter, the amount of funding determined by the State Board of Education pursuant to this section shall not be more than 70 percent of the unadjusted amount to which a charter school would otherwise be entitled, unless the State Board of Education determines that a greater or lesser amount is appropriate based on the criteria specified in paragraph (1) of subdivision (a).

(5) This section does not authorize the board to adjust the amount of funding a charter school receives on the basis of average daily attendance generated through classroom-based instruction, as defined for purposes of calculating average daily attendance for classroom-based instruction apportionments by paragraph (1) of subdivision (d) of Section 47612.5.

(b) (1) The State Board of Education shall appoint an advisory committee to recommend criteria to the board in accordance with this section if it has not done so by the effective date of the act adding this section. The advisory committee shall include, but is not limited to, representatives from school district superintendents, charter schools, teachers, parents, members of the governing boards of school districts, county superintendents of schools, and the Superintendent of Public Instruction.

(2) If a charter school submits a substantially complete request for a determination for funding by February 13, 2002, and the State Board of Education does not act on that request by March 19, 2002, full funding is automatically granted for the 2001–02 fiscal year, but the charter school shall reapply for a determination for funding for the 2002–03 fiscal year.

(3) The determination for funding shall be on a percentage basis and the superintendent shall implement the determination for funding by reducing the charter school's reported average daily attendance by the determination for funding percentage specified by the State Board of Education.

(4) If the State Board of Education denies request for a determination for funding or provides a reduction as authorized by subdivision (a), the board shall, in writing, give the reasons for its denial or reduction and, if appropriate, may describe how any deficiencies or problems may be addressed.

(c) Each charter school offering nonclassroom-based instruction shall, in each report provided to the Superintendent of Public Instruction for apportionment purposes, identify the portion of its average daily attendance that is generated through nonclassroom-based instruction as defined in paragraph (2) of subdivision (d) of Section 47612.5.

(d) Notwithstanding any other provision of law, charter schools shall be subject, with regard to subdivisions (c) and (d) of Section 47612.5 and this section, to audits conducted pursuant to Section 41020.

SEC. 6. (a) The State Board of Education may adopt regulations for the purposes of Section 47612.5, 47614.5, 47634.2 or other sections as necessary to effectively implement this act 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. For the purposes of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), including Section 11349.6 of the Government Code, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any regulation adopted pursuant to this section shall not remain in effect more than 180 days unless the State Board of Education complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

(b) It is the intent of the Legislature that, for purposes of making the computations required by Section 8 of Article XVI of the California Constitution, appropriations made to implement Section 47614.5 of the Education Code be deemed to be ''General Fund'' revenues allocated to school districts as defined in subdivision (c) of Section 41202 of the Education Code for the 2001–02 fiscal year and each fiscal year thereafter and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B'' as defined in subdivision (e) of Section 41202 of the Education Code, for the fiscal year for which an appropriation is made.

(c) Notwithstanding any other provision of law, any changes to funding levels for charter schools made by the act adding this section shall apply to the entire 2001–02 fiscal year regardless of when this act takes effect.

SEC. 7. Section 1.5 of this bill incorporates amendments to Section 47605 of the Education Code proposed by both this bill and SB 675. 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 47605 of the Education Code, and (3) this bill is enacted after SB 675, in which case Section 1 of this bill shall not become operative.

SEC. 8. Section 2.5 of this bill incorporates amendments to Section 47612.5 of the Education Code proposed by this bill and SB 955. 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 47612.5 of the Education Code, and (3) this bill is enacted after SB 955, in which case Section 47612.5 of the Education Code, as amended by SB 955, shall remain operative only until the operative date of this bill, at which time Section 2.5 of this bill shall become operative, and Section 2 of this bill shall not become operative.

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## CHAPTER 893

An act to add Section 1714.01 to the Civil Code, to amend Section 377.60 of the Code of Civil Procedure, to amend Sections 297, 299.5, 9000, 9002, 9004, and 9005 of the Family Code, to amend Section 22871.2 of, and to add Section 31780.2 to, the Government Code, to add Section 1374.58 to the Health and Safety Code, to add Section 10121.7 to the Insurance Code, to amend Section 233 of the Labor Code, to amend Sections 1460, 1811, 1812, 1820, 1821, 1822, 1829, 1861, 1863, 1871, 1873, 1874, 1891, 1895, 2111.5, 2212, 2213, 2357, 2359, 2403, 2423, 2430, 2504, 2572, 2580, 2614.5, 2622, 2651, 2653, 2681, 2682, 2687, 2700, 2803, 2805, 6122, 6240, 8461, 8462, and 8465 of, and to add Sections 37, 1813.1, 4716, and 6122.1 to, the Probate Code, to add Section 17021.7 to the Revenue and Taxation Code, and to amend Sections 1030, 1032, 1256, and 2705.1 of the Unemployment Insurance Code, relating to domestic partnerships.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 1714.01 is added to the Civil Code, to read:

1714.01. (a) Domestic partners shall be entitled to recover damages for negligent infliction of emotional distress to the same extent that spouses are entitled to do so under California law.

(b) For the purpose of this section, ''domestic partners'' has the meaning provided in Section 297 of the Family Code.

SEC. 2. Section 377.60 of the Code of Civil Procedure is amended to read:

377.60. A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any of the following persons or by the decedent's personal representative on their behalf:

(a) The decedent's surviving spouse, domestic partner, children, and issue of deceased children, or, if there is no surviving issue of the

decedent, the persons, including the surviving spouse or domestic partner, who would be entitled to the property of the decedent by intestate succession.

(b) Whether or not qualified under subdivision (a), if they were dependent on the decedent, the putative spouse, children of the putative spouse, stepchildren, or parents. As used in this subdivision, ''putative spouse'' means the surviving spouse of a void or voidable marriage who is found by the court to have believed in good faith that the marriage to the decedent was valid.

(c) A minor, whether or not qualified under subdivision (a) or (b), if, at the time of the decedent's death, the minor resided for the previous 180 days in the decedent's household and was dependent on the decedent for one-half or more of the minor's support.

(d) This section applies to any cause of action arising on or after January 1, 1993.

(e) The addition of this section by Chapter 178 of the Statutes of 1992 was not intended to adversely affect the standing of any party having standing under prior law, and the standing of parties governed by that version of this section as added by Chapter 178 of the Statutes of 1992 shall be the same as specified herein as amended by Chapter 563 of the Statutes of 1996.

(f) For the purpose of this section, ''domestic partners'' has the meaning provided in Section 297 of the Family Code.

SEC. 3. Section 297 of the Family Code is amended to read:

297. (a) Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.

(b) A domestic partnership shall be established in California when all of the following requirements are met:

(1) Both persons have a common residence.

(2) Both persons agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership.

(3) Neither person is married or a member of another domestic partnership.

(4) The two persons are not related by blood in a way that would prevent them from being married to each other in this state.

(5) Both persons are at least 18 years of age.

(6) Either of the following:

(A) Both persons are members of the same sex.

(B) One or both of the persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite

sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.

(7) Both persons are capable of consenting to the domestic partnership.

(8) Neither person has previously filed a Declaration of Domestic Partnership with the Secretary of State pursuant to this division that has not been terminated under Section 299.

(9) Both file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division.

(c) ''Have a common residence'' means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.

(d) ''Basic living expenses'' means shelter, utilities, and all other costs directly related to the maintenance of the common household of the common residence of the domestic partners. It also means any other cost, such as medical care, if some or all of the cost is paid as a benefit because a person is another person's domestic partner.

(e) ''Joint responsibility'' means that each partner agrees to provide for the other partner's basic living expenses if the partner is unable to provide for herself or himself. Persons to whom these expenses are owed may enforce this responsibility if, in extending credit or providing goods or services, they relied on the existence of the domestic partnership and the agreement of both partners to be jointly responsible for those specific expenses.

SEC. 4. Section 299.5 of the Family Code is amended to read:

299.5. (a) The obligations that two people have to each other as a result of creating a domestic partnership are those described in Section 297. Registration as a domestic partner under this division shall not be evidence of, or establish, any rights existing under law other than those expressly provided to domestic partners in this division and any provision of law specifically referring to domestic partners.

The provisions relating to domestic partners provided in this division and any provision of law specifically referring to domestic partners shall not diminish any right under any other provision of law.

(b) Upon the termination of a domestic partnership, the partners, from that time forward, shall incur none of the obligations to each other as domestic partners that are created by this division and any other provision of law specifically referring to domestic partners.

(c) The filing of a Declaration of Domestic Partnership pursuant to this division shall not, in and of itself, change the character of property, real or personal, or any interest in any real or personal property owned

by either domestic partner or both of them prior to the date of filing of the declaration.

(d) The filing of a Declaration of Domestic Partnership pursuant to this division shall not, in and of itself, create any interest in, or rights to, any property, real or personal, owned by one partner in the other partner, including, but not limited to, rights similar to community property or quasi-community property.

(e) Any property or interest acquired by the partners during the domestic partnership where title is shared shall be held by the partners in proportion of interest assigned to each partner at the time the property or interest was acquired unless otherwise expressly agreed in writing by both parties. Upon termination of the domestic partnership, this subdivision shall govern the division of any property jointly acquired by the partners.

(f) The formation of a domestic partnership under this division shall not change the individual income or estate tax liability of each domestic partner prior to and during the partnership, unless otherwise provided under another state or federal law or regulation.

SEC. 5. Section 9000 of the Family Code is amended to read:

9000. (a) A stepparent desiring to adopt a child of the stepparent's spouse may for that purpose file a petition in the county in which the petitioner resides.

(b) A domestic partner, as defined in Section 297, desiring to adopt a child of his or her domestic partner may for that purpose file a petition in the county in which the petitioner resides.

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

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

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

(f) For the purposes of this chapter, stepparent adoption includes adoption by a domestic partner, as defined in Section 297.

SEC. 6. Section 9002 of the Family Code is amended to read:

9002. In a stepparent adoption, the prospective adoptive parent is liable for all reasonable costs incurred in connection with the stepparent adoption, including, but not limited to, costs incurred for the investigation required by Section 9001, up to a maximum of seven

hundred dollars ($700). The court, probation officer, qualified court investigator, or county welfare department may defer, waive, or reduce the fee if its payment would cause economic hardship to the prospective adoptive parent detrimental to the welfare of the adopted child.

SEC. 7. Section 9004 of the Family Code is amended to read:

9004. In a stepparent adoption, the form prescribed by the department for the consent of the birth parent shall contain substantially the following notice:

''Notice to the parent who gives the child for adoption: If you and your child lived together at any time as parent and child, the adoption of your child through a stepparent adoption does not affect the child's right to inherit your property or the property of other blood relatives.''

SEC. 8. Section 9005 of the Family Code is amended to read:

9005. (a) Consent of the birth parent to the adoption of the child through a stepparent adoption may not be withdrawn except with court approval. Request for that approval may be made by motion, or a birth parent seeking to withdraw consent may file with the clerk of the court where the adoption petition is pending, a petition for approval of withdrawal of consent, without the necessity of paying a fee for filing the petition. The petition or motion shall be in writing, and shall set forth the reasons for withdrawal of consent, but otherwise may be in any form.

(b) The court clerk shall set the matter for hearing and shall give notice thereof to the probation officer, qualified court investigator, or county welfare department, to the prospective adoptive parent, and to the birth parent or parents by certified mail, return receipt requested, to the address of each as shown in the proceeding, at least 10 days before the time set for hearing.

(c) The probation officer, qualified court investigator, or county welfare department shall, before the hearing of the motion or petition for withdrawal, file a full report with the court and shall appear at the hearing to represent the interests of the child.

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

the court approves the withdrawal of consent, the adoption proceeding shall be dismissed.

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

SEC. 9. Section 22871.2 of the Government Code is amended to read:

22871.2. (a) Notwithstanding subdivision (f) of Section 22754 or any other provision of law, a domestic partner shall be considered to be a family member for purposes of Section 22810, except that a domestic partner shall not be considered a family member for purposes of continued health coverage eligibility upon the death of the employee or annuitant unless the domestic partner is a recipient of a retirement allowance as a surviving beneficiary of the deceased employee or annuitant.

(b) A child of the domestic partner who is enrolled in a health benefits plan as a family member at the time of the death of the employee or annuitant shall be eligible for continued health coverage under this part if the domestic partner is eligible for that continued coverage as provided in subdivision (a).

(c) A surviving domestic partner of a deceased employee or annuitant may not enroll additional family members in a health benefits plan.

SEC. 9.5. Section 31780.2 is added to the Government Code, to read:

31780.2. (a) In a county of the 10th class, as defined in Sections 28020 and 28031, any benefits accorded to a spouse pursuant to this article and Article 11 (commencing with Section 31760), Article 15.5 (commencing with Section 31841), Article 15.6 (commencing with Section 31855), and Article 16 (commencing with Section 31861), or any of them, may be accorded to a domestic partner, as defined in Section 297 of the Family Code, and registered pursuant to Division 2.5 (commencing with Section 297) of the Family Code, provided that the member and the member's domestic partner have a current Affidavit of Domestic Partnership, in the form adopted by the county board of supervisors, on file with the county for at least one year prior to the member's retirement or death prior to retirement.

(b) In the event a member described in subdivision (a) has a surviving dependent child, the surviving dependent child shall receive the death and survivor's allowance until age 19 years or until married, whichever occurs earlier, or until age 22 years if attending an educational institution. When the member's surviving dependent child reaches age 19 years or is no longer a dependent, whichever occurs earlier, or reaches age 22 years if attending an educational institution, then the benefits

accorded to a spouse, as specified in subdivision (a), may be accorded to a domestic partner pursuant to this section. However, if a surviving dependent child elects to receive a lump sum payment, the lump sum payment shall be shared among any surviving dependent children and the domestic partner, pursuant to this section, in a proportional manner.

(c) This section shall not be operative unless and until the county board of supervisors, by resolution adopted by a majority vote, makes this section operative in the county.

SEC. 10. Section 1374.58 is added to the Health and Safety Code, to read:

1374.58. (a) A group health care service plan that provides hospital, medical, or surgical expense benefits shall offer coverage to employers or guaranteed associations, as defined in Section 1357, for the domestic partner of an employee or subscriber to the same extent, and subject to the same terms and conditions, as provided to a dependent of the employee or subscriber, and shall inform employers and guaranteed associations of the availability of this coverage.

(b) If an employer or guaranteed association has purchased coverage for domestic partners pursuant to subdivision (a), a health care service plan that provides hospital, medical, or surgical expense benefits for employees or subscribers and their dependents shall enroll as a dependent, upon application by the employer or group administrator, a domestic partner of an employee or subscriber in accordance with the terms and conditions of the group contract that apply generally to all dependents under the plan, including coordination of benefits.

(c) For purposes of this section, the term ''domestic partner'' shall have the same meaning as that term is used in Section 297 of the Family Code.

(d) A health care service plan may require that the employee or subscriber verify the status of the domestic partnership by providing to the plan a copy of a valid Declaration of Domestic Partnership filed with the Secretary of State pursuant to Section 298 of the Family Code or an equivalent document issued by a local agency of this state, another state, or a local agency of another state under which the partnership is created. The plan may also require that the employee or subscriber notify the plan upon the termination of the domestic partnership.

(e) Nothing in this section shall be construed to expand the requirements of Section 4980B of Title 26 of the United States Code, Section 1161, and following, of Title 29 of the United States Code, or Section 300bb-1, and following, of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as those provisions may be later amended.

SEC. 11. Section 10121.7 is added to the Insurance Code, to read:

10121.7. (a) A policy of group disability insurance that provides hospital, medical, or surgical expense benefits shall offer coverage to employers or guaranteed associations, as defined in Section 10700, for the domestic partner of an employee, insured, or policyholder to the same extent, and subject to the same terms and conditions, as provided to a dependent of the employee, insured, or policyholder, and shall inform employers and guaranteed associations of the availability of this coverage.

(b) If an employer or guaranteed association has purchased coverage for domestic partners pursuant to subdivision (a), a disability insurer that provides hospital, medical, or surgical expense benefits for employees, insureds, or policyholders and their dependents shall enroll as a dependent, upon application by the employer or group administrator, a domestic partner of the employee, insured, or policyholder in accordance with the terms and conditions of the group contract that apply generally to all dependents under the policy, including coordination of benefits.

(c) For purposes of this section, the term ''domestic partner'' shall have the same meaning as that term is used in Section 297 of the Family Code.

(d) A policy of group disability insurance may require that the employee, insured, or policyholder verify the status of the domestic partnership by providing to the insurer a copy of a valid Declaration of Domestic Partnership filed with the Secretary of State pursuant to Section 298 of the Family Code or an equivalent document issued by a local agency of this state, another state, or a local agency of another state under which the partnership is created. The policy may also require that the employee, insured, or policyholder notify the insurer upon the termination of the domestic partnership.

(e) Nothing in this section shall be construed to expand the requirements of Section 4980B of Title 26 of the United States Code, Section 1161, and following, of Title 29 of the United States Code, or Section 300bb-1, and following, of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as those provisions may be later amended.

SEC. 12. Section 233 of the Labor Code is amended to read:

233. (a) Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, to attend to an illness of a child, parent, spouse, or domestic partner of the employee. All conditions and restrictions placed by the employer upon the use by an employee of sick

leave also shall apply to the use by an employee of sick leave to attend to an illness of his or her child, parent, spouse, or domestic partner. This section does not extend the maximum period of leave to which an employee is entitled under Section 12945.2 of the Government Code or under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2606 et seq.), regardless of whether the employee receives sick leave compensation during that leave.

(b) As used in this section:

(1) ''Child'' means a biological, foster, or adopted child, a stepchild, a legal ward, a child of a domestic partner, or a child of a person standing in loco parentis.

(2) ''Employer'' means any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

(3) ''Parent'' means a biological, foster, or adoptive parent, a stepparent, or a legal guardian.

(4) ''Sick leave'' means accrued increments of compensated leave provided by an employer to an employee as a benefit of the employment for use by the employee during an absence from the employment for any of the following reasons:

(A) The employee is physically or mentally unable to perform his or her duties due to illness, injury, or a medical condition of the employee.

(B) The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the employee.

(C) The absence is for other medical reasons of the employee, such as pregnancy or obtaining a physical examination.

''Sick leave'' does not include any benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406, as amended) and does not include any insurance benefit, workers' compensation benefit, unemployment compensation disability benefit, or benefit not payable from the employer's general assets.

(c) No employer shall deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness of a child, parent, spouse, or domestic partner of the employee.

(d) Any employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day's pay, whichever is greater, and to appropriate equitable relief.

(e) Upon the filing of a complaint by an employee, the Labor Commissioner shall enforce the provisions of this section in accordance with the provisions of Chapter 4 (commencing with Section 79) of Division 1, including, but not limited to, Sections 92, 96.7, 98, and 98.1

to 98.8, inclusive. Alternatively, an employee may bring a civil action for the remedies provided by this section in a court of competent jurisdiction. If the employee prevails, the court may award reasonable attorney's fees.

(f) The rights and remedies specified in this section are cumulative and nonexclusive and are in addition to any other rights or remedies afforded by contract or under other provisions of law.

SEC. 13. Section 37 is added to the Probate Code, to read:

37. (a) "Domestic partner" means one of two persons who have filed a Declaration of Domestic Partnership with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code, provided that the domestic partnership has not been terminated pursuant to Section 299 of the Family Code.

(b) Notwithstanding Section 299 of the Family Code, if a domestic partnership is terminated by the death of one of the parties and Notice of Termination was not filed by either party prior to the date of death of the decedent, the domestic partner who survives the deceased is a surviving domestic partner, and shall be entitled to the rights of a surviving domestic partner as provided in this code.

SEC. 14. Section 1460 of the Probate Code is amended to read:

1460. (a) Subject to Sections 1202 and 1203, if notice of hearing is required under this division but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and place of the hearing shall be given at least 15 days before the day of the hearing as provided in this section.

(b) Subject to subdivision (e), the petitioner, who includes for the purposes of this section a person filing a petition, report, or account, shall cause the notice of hearing to be mailed to each of the following persons:

(1) The guardian or conservator.

(2) The ward or the conservatee.

(3) The spouse of the ward or conservatee, if the ward or conservatee has a spouse, or the domestic partner of the conservatee, if the conservatee has a domestic partner.

(4) Any person who has requested special notice of the matter, as provided in Section 2700.

(5) For any hearing on a petition to terminate a guardianship, to accept the resignation of, or to remove the guardian, the persons described in subdivision (c) of Section 1510.

(6) For any hearing on a petition to terminate a conservatorship, to accept the resignation of, or to remove the conservator, the persons described in subdivision (b) of Section 1821.

(c) The clerk of the court shall cause the notice of the hearing to be posted as provided in Section 1230 if the posting is required by subdivision (c) of Section 2543.

(d) Except as provided in subdivision (e), nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Chapter 10 (commencing with Section 2700) of Part 4.

(e) The court for good cause may dispense with the notice otherwise required to be given to a person as provided in this section.

SEC. 15. Section 1811 of the Probate Code is amended to read:

1811. (a) Subject to Section 1813, the spouse, domestic partner, or an adult child, parent, brother, or sister of the proposed conservatee may nominate a conservator in the petition or at the hearing on the petition.

(b) Subject to Section 1813, the spouse, domestic partner, or a parent of the proposed conservatee may nominate a conservator in a writing signed either before or after the petition is filed and that nomination remains effective notwithstanding the subsequent legal incapacity or death of the spouse, domestic partner, or parent.

SEC. 16. Section 1812 of the Probate Code is amended to read:

1812. (a) Subject to Sections 1810 and 1813, the selection of a conservator of the person or estate, or both, is solely in the discretion of the court and, in making the selection, the court is to be guided by what appears to be for the best interests of the proposed conservatee.

(b) Subject to Sections 1810 and 1813, of persons equally qualified in the opinion of the court to appointment as conservator of the person or estate or both, preference is to be given in the following order:

(1) The spouse or domestic partner of the proposed conservatee or the person nominated by the spouse or domestic partner pursuant to Section 1811.

(2) An adult child of the proposed conservatee or the person nominated by the child pursuant to Section 1811.

(3) A parent of the proposed conservatee or the person nominated by the parent pursuant to Section 1811.

(4) A brother or sister of the proposed conservatee or the person nominated by the brother or sister pursuant to Section 1811.

(5) Any other person or entity eligible for appointment as a conservator under this code or, if there is no person or entity willing to act as a conservator, under the Welfare and Institutions Code.

(c) The preference for any nominee for appointment under paragraphs (2), (3), and (4) of subdivision (b) is subordinate to the preference for any other parent, child, brother, or sister in that class.

SEC. 16.5. Section 1813.1 is added to the Probate Code, to read:

1813.1. (a) (1) The domestic partner of a proposed conservatee may not petition for the appointment of a conservator for a domestic partner or be appointed as conservator of the person or estate of the proposed conservatee unless the petitioner alleges in the petition for appointment as conservator, and the court finds, that the domestic

partner has not terminated and is not intending to terminate the domestic partnership as provided in Section 299 of the Family Code. However, if the court finds by clear and convincing evidence that the appointment of a domestic partner who has terminated or is intending to terminate the domestic partnership is in the best interests of the proposed conservatee, the court may appoint the domestic partner.

(2) Prior to making this appointment, the court shall appoint counsel to consult with and advise the conservatee, and to report to the court his or her findings concerning the suitability of appointing the domestic partner as conservator.

(b) The domestic partner of a conservatee shall disclose to the conservator, or if the domestic partner is the conservator, shall notify the court, of the termination of a domestic partnership as provided in Section 299 of the Family Code within 10 days of its occurrence. The court may, upon receipt of the notice, set the matter for hearing on an order to show cause why the appointment of the domestic partner as conservator, if the domestic partner is the conservator, should not be terminated and a new conservator appointed by the court.

SEC. 17. Section 1820 of the Probate Code is amended to read:

1820. (a) A petition for the appointment of a conservator may be filed by any of the following:

(1) The proposed conservatee.

(2) The spouse or domestic partner of the proposed conservatee.

(3) A relative of the proposed conservatee.

(4) Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state.

(5) Any other interested person or friend of the proposed conservatee.

(b) If the proposed conservatee is a minor, the petition may be filed during his or her minority so that the appointment of a conservator may be made effective immediately upon the minor's attaining the age of majority. An existing guardian of the minor may be appointed as conservator under this part upon the minor's attaining the age of majority, whether or not the guardian's accounts have been settled.

(c) A creditor of the proposed conservatee may not file a petition for appointment of a conservator unless the creditor is a person described in paragraph (2), (3), or (4) of subdivision (a).

SEC. 18. Section 1821 of the Probate Code is amended to read:

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and state the reasons why a conservatorship is necessary. Unless the petitioner is a bank or other entity authorized to conduct the business of a trust company, the

petitioner shall also file supplemental information as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee's residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The facts required to address the categories set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner when he or she has knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts.

Where any of the categories set forth in paragraphs (1) to (5), inclusive, are not applicable to the proposed conservatorship, the petitioner shall so indicate and state on the supplemental information form the reasons therefor.

The Judicial Council shall develop a supplemental information form for the information required pursuant to paragraphs (1) to (5), inclusive, after consultation with individuals or organizations approved by the Judicial Council, who represent public conservators, court investigators, the State Bar, specialists with experience in performing assessments and coordinating community-based services, and legal services for the elderly and disabled.

The supplemental information form shall be separate and distinct from the form for the petition. The supplemental information shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court shall have discretion at any other time to release the supplemental information to other persons if it would serve the interests of the conservatee. The county clerk shall make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner, and of the relatives of the proposed conservatee within the second

degree. If no spouse or domestic partner of the proposed conservatee or relatives of the proposed conservatee within the second degree are known to the petitioner, the petition shall set forth, so far as they are known to the petitioner, the names and addresses of the following persons who, for the purposes of Section 1822, shall all be deemed to be relatives:

(1) A spouse or domestic partner of a predeceased parent of a proposed conservatee.

(2) The children of a predeceased spouse or domestic partner of a proposed conservatee.

(3) The siblings of the proposed conservatee's parents, if any, but if none, then the natural and adoptive children of the proposed conservatee's parents' siblings.

(4) The natural and adoptive children of the proposed conservatee's siblings.

(c) If the petition is filed by a person other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor, or the agent of a creditor or debtor, of the proposed conservatee.

(d) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(f) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(h) In the case of an allegedly developmentally disabled adult, the petition shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

Reports submitted pursuant to Section 416.8 of the Health and Safety Code meet the requirements of this section, and conservatorships filed pursuant to Article 7.5 (commencing with Section 416) of Part 1 of Division 1 of the Health and Safety Code are exempt from providing the supplemental information required by this section, so long as the guidelines adopted by the State Department of Developmental Services for regional centers require the same information that is required pursuant to this section.

SEC. 19. Section 1822 of the Probate Code is amended to read:

1822. (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in this section. The notice shall be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing under this section.

(b) Notice shall be mailed to the following persons:

(1) The spouse, if any, or domestic partner, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

(e) If the proposed conservatee is a person with developmental disabilities, at least 30 days before the day of the hearing on the petition, the petitioner shall mail a notice of the hearing and a copy of the petition to the regional center identified in Section 1827.5.

SEC. 20. Section 1829 of the Probate Code is amended to read:

1829. Any of the following persons may appear at the hearing to support or oppose the petition:

(a) The proposed conservatee.

(b) The spouse or domestic partner of the proposed conservatee.

(c) A relative of the proposed conservatee.

(d) Any interested person or friend of the proposed conservatee.

SEC. 21. Section 1861 of the Probate Code is amended to read:

1861. (a) A petition for the termination of the conservatorship may be filed by any of the following:

(1) The conservator.

(2) The conservatee.

(3) The spouse, or domestic partner, or any relative or friend of the conservatee or other interested person.

(b) The petition shall state facts showing that the conservatorship is no longer required.

SEC. 22. Section 1863 of the Probate Code is amended to read:

1863. (a) The court shall hear and determine the matter according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded by the conservatee. The conservator, the conservatee, or the spouse, or domestic partner, or any relative or friend of the conservatee or other interested person may appear and support or oppose the petition.

(b) If the court determines that the conservatorship is no longer required or that grounds for establishment of a conservatorship of the person or estate, or both, no longer exist, the court shall make this finding and shall enter judgment terminating the conservatorship accordingly.

(c) At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and the bond given by the conservator may be exonerated upon the settlement and approval of the conservator's final account by the court.

(d) Termination of conservatorship does not preclude a new proceeding for appointment of a conservator on the same or other grounds.

SEC. 23. Section 1871 of the Probate Code is amended to read:

1871. Nothing in this article shall be construed to deny a conservatee any of the following:

(a) The right to control an allowance provided under Section 2421.

(b) The right to control wages or salary to the extent provided in Section 2601.

(c) The right to make a will.

(d) The right to enter into transactions to the extent reasonable to provide the necessaries of life to the conservatee and the spouse and minor children of the conservatee and to provide the basic living expenses, as defined in Section 297 of the Family Code, to the domestic partner of the conservatee.

SEC. 24. Section 1873 of the Probate Code is amended to read:

1873. (a) In the order appointing the conservator or upon a petition filed under Section 1874, the court may, by order, authorize the conservatee, subject to Section 1876, to enter into transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate. The court, by order, may modify the legal capacity a conservatee would otherwise have under Section 1872 by broadening or restricting the power of the conservatee to enter into transactions or types of transactions as may be appropriate

in the circumstances of the particular conservatee and conservatorship estate.

(b) In an order made under this section, the court may include limitations or conditions on the exercise of the authority granted to the conservatee as the court determines to be appropriate including, but not limited to, the following:

(1) A requirement that for specific types of transactions or for all transactions authorized by the order, the conservatee obtain prior approval of the transaction by the court or conservator before exercising the authority granted by the order.

(2) A provision that the conservator has the right to avoid any transaction made by the conservatee pursuant to the authority of the order if the transaction is not one into which a reasonably prudent person might enter.

(c) The court, in its discretion, may provide in the order that, unless extended by subsequent order of the court, the order or specific provisions of the order terminate at a time specified in the order.

(d) An order under this section continues in effect until the earliest of the following times:

(1) The time specified in the order, if any.

(2) The time the order is modified or revoked.

(3) The time the conservatorship of the estate is terminated.

(e) An order under this section may be modified or revoked upon petition filed by the conservator, conservatee, the spouse or domestic partner of the conservatee, or any relative or friend of the conservatee, or any interested person. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 25. Section 1874 of the Probate Code is amended to read:

1874. (a) After a conservator has been appointed, a petition requesting an order under Section 1873 may be filed by any of the following:

(1) The conservator.

(2) The conservatee.

(3) The spouse, domestic partner, or any relative or friend of the conservatee.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 26. Section 1891 of the Probate Code is amended to read:

1891. (a) A petition may be filed under this article requesting that the court make an order under Section 1880 or that the court modify or revoke an order made under Section 1880. The petition shall state facts showing that the order requested is appropriate.

(b) The petition may be filed by any of the following:

(1) The conservator.

(2) The conservatee.

(3) The spouse, domestic partner, or any relative or friend of the conservatee.

(c) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner and of the relatives of the conservatee within the second degree.

SEC. 27. Section 1895 of the Probate Code is amended to read:

1895. (a) The conservatee, the spouse, the domestic partner, any relative, or any friend of the conservatee, the conservator, or any other interested person may appear at the hearing to support or oppose the petition.

(b) Except where the conservatee is absent from the hearing and is not required to attend the hearing under the provisions of Section 1893 and any showing required by Section 1893 has been made, the court shall, prior to granting the petition, inform the conservatee of all of the following:

(1) The nature and purpose of the proceeding.

(2) The nature and effect on the conservatee's basic rights of the order requested.

(3) The conservatee has the right to oppose the petition, to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) After the court informs the conservatee of the matters listed in subdivision (b) and prior to granting the petition, the court shall consult the conservatee to determine the conservatee's opinion concerning the order requested in the petition.

SEC. 28. Section 2111.5 of the Probate Code is amended to read:

2111.5. (a) Except as provided in subdivision (b), every court official or employee who has duties or responsibilities related to the appointment of a guardian or conservator, or the processing of any document related to a guardian or conservator, and every person who is related by blood or marriage to a court official or employee who has these duties, is prohibited from purchasing, leasing, or renting any real or personal property from the estate of the ward or conservatee whom the guardian or conservator represents. For purposes of this subdivision, a ''person related by blood or marriage'' means any of the following:

(1) A person's spouse or domestic partner.

(2) Relatives within the second degree of lineal or collateral consanguinity of a person or a person's spouse.

(b) A person described in subdivision (a) is not prohibited from purchasing real or personal property from the estate of the ward or conservatee whom the guardian or conservator represents where the

purchase is made under terms and conditions of a public sale of the property.

(c) A violation of this section shall result in the rescission of the purchase, lease, or rental of the property. Any losses incurred by the estate of the ward or conservatee because the property was sold or leased at less than fair market value shall be deemed as charges against the guardian or conservator under the provisions of Sections 2401.3 and 2401.5. The court shall assess a civil penalty equal to three times the charges against the guardian, conservator, or other person in violation of this section, and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court shall order the guardian, conservator, or other person in violation of this section to pay a fine of up to five thousand dollars ($5,000) for each violation. The fines and penalties provided in this section are in addition to any other rights and remedies provided by law.

SEC. 29. Section 2212 of the Probate Code is amended to read:

2212. The petition for transfer may be filed only by one or more of the following:

(a) The guardian or conservator.

(b) The ward or conservatee.

(c) The spouse of the ward or the spouse or domestic partner of the conservatee.

(d) A relative or friend of the ward or conservatee.

(e) Any other interested person.

SEC. 30. Section 2213 of the Probate Code is amended to read:

2213. The petition for transfer shall set forth all of the following:

(a) The county to which the proceeding is to be transferred.

(b) The name and address of the ward or conservatee.

(c) A brief description of the character, value, and location of the property of the ward or conservatee.

(d) The reasons for the transfer.

(e) The names and addresses, so far as they are known to the petitioner, of the spouse and of the relatives of the ward within the second degree, or of the spouse or domestic partner and of the relatives of the conservatee within the second degree.

(f) The name and address of the guardian or conservator if other than the petitioner.

SEC. 31. Section 2357 of the Probate Code is amended to read:

2357. (a) As used in this section:

(1) ''Guardian or conservator'' includes a temporary guardian of the person or a temporary conservator of the person.

(2) ''Ward or conservatee'' includes a person for whom a temporary guardian of the person or temporary conservator of the person has been appointed.

(b) If the ward or conservatee requires medical treatment for an existing or continuing medical condition which is not authorized to be performed upon the ward or conservatee under Section 2252, 2353, 2354, or 2355, and the ward or conservatee is unable to give an informed consent to this medical treatment, the guardian or conservator may petition the court under this section for an order authorizing the medical treatment and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the medical treatment.

(c) The petition shall state, or set forth by medical affidavit attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed:

(1) The nature of the medical condition of the ward or conservatee which requires treatment.

(2) The recommended course of medical treatment which is considered to be medically appropriate.

(3) The threat to the health of the ward or conservatee if authorization to consent to the recommended course of treatment is delayed or denied by the court.

(4) The predictable or probable outcome of the recommended course of treatment.

(5) The medically available alternatives, if any, to the course of treatment recommended.

(6) The efforts made to obtain an informed consent from the ward or conservatee.

(7) The name and addresses, so far as they are known to the petitioner, of the persons specified in subdivision (c) of Section 1510 in a guardianship proceeding or subdivision (b) of Section 1821 in a conservatorship proceeding.

(d) Upon the filing of the petition, unless an attorney is already appointed the court shall appoint the public defender or private counsel under Section 1471, to consult with and represent the ward or conservatee at the hearing on the petition and, if that appointment is made, Section 1472 applies.

(e) Notice of the petition shall be given as follows:

(1) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition shall be personally served on the ward, if 12 years of age or older, or the conservatee, and on the attorney for the ward or conservatee.

(2) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition shall be mailed to the following persons:

(A) The spouse or domestic partner, if any, of the proposed conservatee at the address stated in the petition.

(B) The relatives named in the petition at their addresses stated in the petition.

(f) For good cause, the court may shorten or waive notice of the hearing as provided by this section. In determining the period of notice to be required, the court shall take into account both of the following:

(1) The existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to the petition or in a medical affidavit presented to the court.

(2) The desirability, where the condition of the ward or conservatee permits, of giving adequate notice to all interested persons.

(g) Notwithstanding subdivisions (e) and (f), the matter may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the ward or conservatee so stipulate and further stipulate that there remains no issue of fact to be determined.

(h) The court may make an order authorizing the recommended course of medical treatment of the ward or conservatee and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the recommended course of medical treatment for the ward or conservatee if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the ward or conservatee requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the ward or conservatee.

(3) The ward or conservatee is unable to give an informed consent to the recommended course of treatment.

(i) Upon petition of the ward or conservatee or other interested person, the court may order that the guardian or conservator obtain or consent to, or obtain and consent to, specified medical treatment to be performed upon the ward or conservatee. Notice of the hearing on the petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 32. Section 2359 of the Probate Code is amended to read:

2359. (a) Upon petition of the guardian or conservator or ward or conservatee or other interested person, the court may authorize and instruct the guardian or conservator or approve and confirm the acts of the guardian or conservator.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) (1) When a guardian or conservator petitions for the approval of a purchase, lease, or rental of real or personal property from the estate of a ward or conservatee, the guardian or conservator shall provide a statement disclosing the family or affiliate relationship between the guardian and conservator and the purchaser, lessee, or renter of the property, and the family or affiliate relationship between the guardian or conservator and any agent hired by the guardian or conservator.

(2) For the purposes of this subdivision, ''family'' means a person's spouse, domestic partner, or relatives within the second degree of lineal or collateral consanguinity of a person or a person's spouse. For the purposes of this subdivision, ''affiliate'' means an entity that is under the direct control, indirect control, or common control of the guardian or conservator.

(3) A violation of this section shall result in the rescission of the purchase, lease, or rental of the property. Any losses incurred by the estate of the ward or conservatee because the property was sold or leased at less than fair market value shall be deemed as charges against the guardian or conservator under the provisions of Sections 2401.3 and 2401.5. The court shall assess a civil penalty equal to three times the charges against the guardian, conservator, or other person in violation of this section, and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court shall order the guardian, conservator, or other person in violation of this section to pay a fine of up to five thousand dollars ($5,000) for each violation. The fines and penalties provided in this section are in addition to any other rights and remedies provided by law.

SEC. 33. Section 2403 of the Probate Code is amended to read:

2403. (a) Upon petition of the guardian or conservator, the ward or conservatee, a creditor, or other interested person, the court may authorize and instruct the guardian or conservator, or approve and confirm the acts of the guardian or conservator, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) (1) When a guardian or conservator petitions for the approval of a purchase, lease, or rental of real or personal property from the estate of a ward or conservatee, the guardian or conservator shall provide a statement disclosing the family or affiliate relationship between the guardian and conservator and the purchaser, lessee, or renter of the property, and the family or affiliate relationship between the guardian or conservator and any agent hired by the guardian or conservator.

(2) For the purposes of this subdivision, ''family'' means a person's spouse, domestic partner, or relatives within the second degree of lineal or collateral consanguinity of a person or a person's spouse. For the purposes of this subdivision, ''affiliate'' means an entity that is under the direct control, indirect control, or common control of the guardian or conservator.

(3) A violation of this section shall result in the rescission of the purchase, lease, or rental of the property. Any losses incurred by the estate of the ward or conservatee because the property was sold or leased at less than fair market value shall be deemed as charges against the guardian or conservator under the provisions of Sections 2401.3 and 2401.5. The court shall assess a civil penalty equal to three times the charges against the guardian, conservator, or other person in violation of this section, and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court shall order the guardian, conservator, or other person in violation of this section to pay a fine of up to five thousand dollars ($5,000) for each violation. The fines and penalties provided in this section are in addition to any other rights and remedies provided by law.

SEC. 34. Section 2423 of the Probate Code is amended to read:

2423. (a) Upon petition of the conservator, the conservatee, the spouse or domestic partner of the conservatee, or a relative within the second degree of the conservatee, the court may by order authorize or direct the conservator to pay and distribute surplus income of the estate or any part of the surplus income (not used for the support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee) to the spouse or domestic partner of the conservatee and to relatives within the second degree of the conservatee whom the conservatee would, in the judgment of the court, have aided but for the existence of the conservatorship. The court in ordering payments under this section may impose conditions if the court determines that the conservatee would have imposed the conditions if the conservatee had the capacity to act.

(b) The granting of the order and the amounts and proportions of the payments are discretionary with the court, but the court shall consider all of the following:

(1) The amount of surplus income available after adequate provision has been made for the comfortable and suitable support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee.

(2) The circumstances and condition of life to which the conservatee and the spouse or domestic partner and relatives have been accustomed.

(3) The amount that the conservatee would in the judgment of the court have allowed the spouse or domestic partner and relatives but for the existence of the conservatorship.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 35. Section 2430 of the Probate Code is amended to read:

2430. (a) Subject to subdivisions (b) and (c), the guardian or conservator shall pay the following from any principal and income of the estate:

(1) The debts incurred by the ward or conservatee before creation of the guardianship or conservatorship, giving priority to the debts described in Section 2431 to the extent required by that section.

(2) The debts incurred by the ward or conservatee during the guardianship or conservatorship to provide the necessaries of life to the ward or conservatee, and to the spouse and minor children of the ward or conservatee, to the extent the debt is reasonable. Also, the debts reasonably incurred by the conservatee during the conservatorship to provide the basic living expenses, as defined in Section 297 of the Family Code, to the domestic partner of the conservatee. The guardian or conservator may deduct the amount of any payments for these debts from any allowance otherwise payable to the ward or conservatee.

(3) In the case of a conservatorship, any other debt incurred by the conservatee during the conservatorship only if the debt satisfies the requirements of any order made under Chapter 4 (commencing with Section 1870) of Part 3.

(4) The reasonable expenses incurred in the collection, care, and administration of the estate, but court authorization is required for payment of compensation to any of the following:

(A) The guardian or conservator of the person or estate or both.

(B) An attorney for the guardian or conservator of the person or estate or both.

(C) An attorney for the ward or conservatee.

(D) An attorney for the estate.

(E) The public guardian for the costs and fee under Section 2902.

(b) The payments provided for by paragraph (3) of subdivision (a) are not required to be made to the extent the payments would impair the ability to provide the necessaries of life to the conservatee and the spouse and minor children of the conservatee and to provide the basic living expenses, as defined in Section 297 of the Family Code, of the domestic partner of the conservatee.

(c) The guardian or conservator may petition the court under Section 2403 for instructions when there is doubt whether a debt should be paid under this section.

SEC. 36. Section 2504 of the Probate Code is amended to read:

2504. Court approval is required for the compromise or settlement of any of the following:

(a) A claim for the support, maintenance, or education of (1) the ward or conservatee, or (2) a person whom the ward or conservatee is legally obligated to support, maintain, or educate, against any other person (including, but not limited to, the spouse or parent of the ward or the spouse, domestic partner, parent, or adult child of the conservatee).

(b) A claim of the ward or conservatee for wrongful death.

(c) A claim of the ward or conservatee for physical or nonphysical harm to the person.

SEC. 37. Section 2572 of the Probate Code is amended to read:

2572. An order authorizing the guardian or conservator to purchase real property may authorize the guardian or conservator to join with the spouse of the ward or the spouse or domestic partner of the conservatee or with any other person or persons in the purchase of the real property, or an interest, equity, or estate therein, in severalty, in common, in community, or in joint tenancy, for cash or upon a credit or for part cash and part credit. When the court authorizes the purchase of real property, the court may order the guardian or conservator to execute all necessary instruments and commitments to complete the transaction.

SEC. 38. Section 2580 of the Probate Code is amended to read:

2580. (a) The conservator or other interested person may file a petition under this article for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

(1) Benefiting the conservatee or the estate.

(2) Minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the conservatee.

(3) Providing gifts for any purposes, and to any charities, relatives (including the other spouse or domestic partner), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

(b) The action proposed in the petition may include, but is not limited to, the following:

(1) Making gifts of principal or income, or both, of the estate, outright or in trust.

(2) Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(3) Exercising or releasing the conservatee's powers as donee of a power of appointment.

(4) Entering into contracts.

(5) Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life. A special needs trust for money paid pursuant to a compromise or judgment for a conservatee may be established only under Chapter 4 (commencing with Section 3600) of Part 8, and not under this article.

(6) Transferring to a trust created by the conservator or conservatee any property unintentionally omitted from the trust.

(7) Exercising options of the conservatee to purchase or exchange securities or other property.

(8) Exercising the rights of the conservatee to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

(A) Life insurance policies, plans, or benefits.

(B) Annuity policies, plans, or benefits.

(C) Mutual fund and other dividend investment plans.

(D) Retirement, profit sharing, and employee welfare plans and benefits.

(9) Exercising the right of the conservatee to elect to take under or against a will.

(10) Exercising the right of the conservatee to disclaim any interest that may be disclaimed under Part 8 (commencing with Section 260) of Division 2.

(11) Exercising the right of the conservatee (A) to revoke or modify a revocable trust or (B) to surrender the right to revoke or modify a revocable trust, but the court shall not authorize or require the conservator to exercise the right to revoke or modify a revocable trust if the instrument governing the trust (A) evidences an intent to reserve the right of revocation or modification exclusively to the conservatee, (B) provides expressly that a conservator may not revoke or modify the trust, or (C) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke or modify the trust.

(12) Making an election referred to in Section 13502 or an election and agreement referred to in Section 13503.

(13) Making a will.

SEC. 39. Section 2614.5 of the Probate Code is amended to read:

2614.5. (a) If the guardian or conservator fails to file an inventory and appraisal within the time allowed by law or by court order, upon request of the ward or conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or friend of the ward or conservatee, or any interested person, the court shall order the guardian or conservator to file the inventory and appraisal within the

time prescribed in the order or to show cause why the guardian or conservator should not be removed. The person who requested the order shall serve it upon the guardian or conservator in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in a manner as is ordered by the court.

(b) If the guardian or conservator fails to file the inventory and appraisal as required by the order within the time prescribed in the order, unless good cause is shown for not doing so, the court, on its own motion or on petition, may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly, and order the guardian or conservator to file an account and to surrender the estate to the person legally entitled thereto.

(c) The procedure provided in this section is optional and does not preclude the use of any other remedy or sanction when an inventory and appraisal is not timely filed.

SEC. 40. Section 2622 of the Probate Code is amended to read:

2622. The ward or conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or friend of the ward or conservatee, or any creditor or other interested person may file written objections to the account of the guardian or conservator, stating the items of the account to which objection is made and the basis for the objection.

SEC. 41. Section 2651 of the Probate Code is amended to read:

2651. The ward or conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or friend of the ward or conservatee, or any interested person may apply by petition to the court to have the guardian or conservator removed. The petition shall state facts showing cause for removal.

SEC. 42. Section 2653 of the Probate Code is amended to read:

2653. (a) The guardian or conservator, the ward or conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or friend of the ward or conservatee, and any interested person may appear at the hearing and support or oppose the petition.

(b) If the court determines that cause for removal of the guardian or conservator exists, the court may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly and, in the case of a guardianship or conservatorship of the estate, order the guardian or conservator to file an account and to surrender the estate to the person legally entitled thereto. If the guardian or conservator fails to file the account as ordered, the court may compel the account pursuant to Section 2629.

SEC. 43. Section 2681 of the Probate Code is amended to read:

2681. A petition for appointment of a successor conservator may be filed by any of the following:

(a) The conservatee.

(b) The spouse or domestic partner of the conservatee.

(c) A relative of the conservatee.

(d) Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state.

(e) Any other interested person or friend of the conservatee.

SEC. 44. Section 2682 of the Probate Code is amended to read:

2682. (a) The petition shall request that a successor conservator be appointed for the person or estate, or both, and shall specify the name and address of the proposed successor conservator and the name and address of the conservatee.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner and of the relatives of the conservatee within the second degree.

(c) If the petition is filed by one other than the conservatee, the petition shall state whether or not the petitioner is a creditor or debtor of the conservatee.

(d) If the conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the conservatee.

(f) The petition shall state whether or not the conservatee will be present at the hearing.

SEC. 45. Section 2687 of the Probate Code is amended to read:

2687. The conservatee, the spouse, the domestic partner, or any relative or friend of the conservatee, or any other interested person may appear at the hearing to support or oppose the petition.

SEC. 46. Section 2700 of the Probate Code is amended to read:

2700. (a) At any time after the issuance of letters of guardianship or conservatorship, the ward, if over 14 years of age or the conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or creditor of the ward or conservatee, or any other interested person, in person or by attorney, may file with the court clerk a written request for special notice.

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent.

(c) Special notice may be requested of any one or more of the following matters:

(1) Petitions filed in the guardianship or conservatorship proceeding.

(2) Inventories and appraisals of property in the estate, including any supplemental inventories and appraisals.

(3) Accounts of the guardian or conservator.

(4) Proceedings for the final termination of the guardianship or conservatorship proceeding.

(d) Special notice may be requested of:

(1) Any one or more of the matters in subdivision (c) by describing the matter or matters.

(2) All the matters in subdivision (c) by referring generally to ''the matters described in subdivision (c) of Section 2700 of the Probate Code'' or by using words of similar meaning.

(e) A copy of the request shall be personally delivered or mailed to the guardian or conservator or to the attorney for the guardian or conservator. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received.

(f) When the original of the request is filed with the court clerk, it shall be accompanied by a written admission or proof of service.

SEC. 47. Section 2803 of the Probate Code is amended to read:

2803. The petition shall set forth all of the following:

(a) The name and address of:

(1) The foreign guardian or conservator, who may but need not be the guardian or conservator appointed in this state.

(2) The ward or conservatee.

(3) The guardian or conservator, so far as is known to the petitioner.

(b) The names, ages, and addresses, so far as they are known to the petitioner, of the spouse of the ward or the spouse or domestic partner of the conservatee and of relatives of the ward or conservatee within the second degree.

(c) A brief description of the character, condition, value, and location of the personal property sought to be transferred.

(d) A statement whether the foreign guardian or conservator has agreed to accept the transfer of the property. If the foreign guardian or conservator has so agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(e) A statement of the manner in which and by whom the foreign guardian or conservator was appointed.

(f) A general statement of the qualifications of the foreign guardian or conservator.

(g) The amount of bond, if any, of the foreign guardian or conservator.

(h) A general statement of the nature and value of the property of the ward or conservatee already under the management or control of the foreign guardian or conservator.

(i) The name of the court having jurisdiction of the foreign guardian or conservator or of the accounts of the foreign guardian or conservator or, if none, the court in which a proceeding may be had with respect to the guardianship or conservatorship if the property is transferred.

(j) Whether there is any pending civil action in this state against the guardian or conservator, the ward or conservatee, or the estate.

(k) A statement of the reasons for the transfer.

SEC. 48. Section 2805 of the Probate Code is amended to read:

2805. Any of the following may appear and file written objections to the petition:

(a) Any person required to be listed in the petition.

(b) Any creditor of the ward or conservatee or of the estate.

(c) The spouse of the ward or the spouse or domestic partner of the conservatee or any relative or friend of the ward or conservatee.

(d) Any other interested person.

SEC. 49. Section 4716 is added to the Probate Code, to read:

4716. (a) If a patient lacks the capacity to make a health care decision, the patient's domestic partner shall have the same authority as a spouse has to make a health care decision for his or her incapacitated spouse. This section may not be construed to expand or restrict the ability of a spouse to make a health care decision for an incapacitated spouse.

(b) For the purposes of this section, the following definitions shall apply:

(1) ''Capacity'' has the same meaning as defined in Section 4609.

(2) ''Health care'' has the same meaning as defined in Section 4615.

(3) ''Health care decision'' has the same meaning as defined in Section 4617.

(4) ''Domestic partner'' has the same meaning as that term is used in Section 297 of the Family Code.

SEC. 50. Section 6122 of the Probate Code is amended to read:

6122. (a) Unless the will expressly provides otherwise, if after executing a will the testator's marriage is dissolved or annulled, the dissolution or annulment revokes all of the following:

(1) Any disposition or appointment of property made by the will to the former spouse.

(2) Any provision of the will conferring a general or special power of appointment on the former spouse.

(3) Any provision of the will nominating the former spouse as executor, trustee, conservator, or guardian.

(b) If any disposition or other provision of a will is revoked solely by this section, it is revived by the testator's remarriage to the former spouse.

(c) In case of revocation by dissolution or annulment:

(1) Property prevented from passing to a former spouse because of the revocation passes as if the former spouse failed to survive the testator.

(2) Other provisions of the will conferring some power or office on the former spouse shall be interpreted as if the former spouse failed to survive the testator.

(d) For purposes of this section, dissolution or annulment means any dissolution or annulment which would exclude the spouse as a surviving spouse within the meaning of Section 78. A decree of legal separation which does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(e) Except as provided in Section 6122.1, no change of circumstances other than as described in this section revokes a will.

(f) Subdivisions (a) to (d), inclusive, do not apply to any case where the final judgment of dissolution or annulment of marriage occurs before January 1, 1985. Such case is governed by the law in effect prior to January 1, 1985.

SEC. 51. Section 6122.1 is added to the Probate Code, to read:

6122.1. (a) Unless the will expressly provides otherwise, if after executing a will the testator's domestic partnership is terminated, the termination revokes all of the following:

(1) Any disposition or appointment of property made by the will to the former domestic partner.

(2) Any provision of the will conferring a general or special power of appointment on the former domestic partner.

(3) Any provision of the will nominating the former domestic partner as executor, trustee, conservator, or guardian.

(b) If any disposition or other provision of a will is revoked solely by this section, it is revived by the testator establishing another domestic partnership with the former domestic partner.

(c) In case of revocation by termination of a domestic partnership:

(1) Property prevented from passing to a former domestic partner because of the revocation passes as if the former domestic partner failed to survive the testator.

(2) Other provisions of the will conferring some power or office on the former domestic partner shall be interpreted as if the former domestic partner failed to survive the testator.

(d) This section shall apply only to wills executed on or after January 1, 2002.

SEC. 52. Section 6240 of the Probate Code is amended to read:

6240. The following is the California Statutory Will form:

## QUESTIONS AND ANSWERS ABOUT THIS CALIFORNIA STATUTORY WILL

The following information, in question and answer form, is not a part of the California Statutory Will. It is designed to help you understand about Wills and to decide if this Will meets your needs. This Will is in a simple form. The complete text of each paragraph of this Will is printed at the end of the Will.

1. *What happens if I die without a Will?* If you die without a Will, what you own (your ''assets'') in your name alone will be divided among your spouse, domestic partner, children, or other relatives according to state law. The court will appoint a relative to collect and distribute your assets.

2. *What can a Will do for me?* In a Will you may designate who will receive your assets at your death. You may designate someone (called an ''executor'') to appear before the court, collect your assets, pay your debts and taxes, and distribute your assets as you specify. You may nominate someone (called a ''guardian'') to raise your children who are under age 18. You may designate someone (called a ''custodian'') to manage assets for your children until they reach any age between 18 and 25.

3. *Does a Will avoid probate?* No. With or without a Will, assets in your name alone usually go through the court probate process. The court's first job is to determine if your Will is valid.

4. *What is community property?* Can I give away my share in my Will? If you are married and you or your spouse earned money during your marriage from work and wages, that money (and the assets bought with it) is community property. Your Will can only give away your one-half of community property. Your Will cannot give away your spouse's one-half of community property.

5. *Does my Will give away all of my assets?* Do all assets go through probate? No. Money in a joint tenancy bank account automatically belongs to the other named owner without probate. If your spouse, domestic partner, or child is on the deed to your house as a joint tenant, the house automatically passes to him or her. Life insurance and retirement plan benefits may pass directly to the named beneficiary. A Will does not necessarily control how these types of ''nonprobate'' assets pass at your death.

6. *Are there different kinds of Wills?* Yes. There are handwritten Wills, typewritten Wills, attorney-prepared Wills, and statutory Wills. All are valid if done precisely as the law requires. You should see a lawyer if you do not want to use this statutory Will or if you do not understand this form.

7. *Who may use this Will?* This Will is based on California law. It is designed only for California residents. You may use this form if you are single, married, a member of a domestic partnership, or divorced. You must be age 18 or older and of sound mind.

8. *Are there any reasons why I should NOT use this statutory Will?* Yes. This is a simple Will. It is not designed to reduce death taxes or other taxes. Talk to a lawyer to do tax planning, especially if (i) your assets will be worth more than $600,000 or the current amount excluded from estate tax under federal law at your death, (ii) you own business-related assets, (iii) you want to create a trust fund for your children's education or other purposes, (iv) you own assets in some other state, (v) you want to disinherit your spouse, domestic partner, or descendants, or (vi) you have valuable interests in pension or profit-sharing plans. You should talk to a lawyer who knows about estate planning if this Will does not meet your needs. This Will treats most adopted children like natural children. You should talk to a lawyer if you have stepchildren or foster children whom you have not adopted.

9. *May I add or cross out any words on this Will?* No. If you do, the Will may be invalid or the court may ignore the crossed out or added words. You may only fill in the blanks. You may amend this Will by a separate document (called a codicil). Talk to a lawyer if you want to do something with your assets which is not allowed in this form.

10. *May I change my Will?* Yes. A Will is not effective until you die. You may make and sign a new Will. You may change your Will at any time, but only by an amendment (called a codicil). You can give away or sell your assets before your death. Your Will only acts on what you own at death.

11. *Where should I keep my Will?* After you and the witnesses sign the Will, keep your Will in your safe deposit box or other safe place. You should tell trusted family members where your Will is kept.

12. *When should I change my Will?* You should make and sign a new Will if you marry, divorce, or terminate your domestic partnership after you sign this Will. Divorce, annulment, or termination of a domestic partnership automatically cancels all property stated to pass to a former husband, wife, or domestic partner under this Will, and revokes the designation of a former spouse or domestic partner as executor, custodian, or guardian. You should sign a new Will when you have more children, or if your spouse or a child dies, or a domestic partner dies or marries. You may want to change your Will if there is a large change in the value of your assets. You may also want to change your Will if you enter a domestic partnership or your domestic partnership has been terminated after you sign this Will.

13. *What can I do if I do not understand something in this Will?* If there is anything in this Will you do not understand, ask a lawyer to explain it to you.

14. *What is an executor?* An ''executor'' is the person you name to collect your assets, pay your debts and taxes, and distribute your assets as the court directs. It may be a person or it may be a qualified bank or trust company.

15. *Should I require a bond?* You may require that an executor post a ''bond.'' A bond is a form of insurance to replace assets that may be mismanaged or stolen by the executor. The cost of the bond is paid from the estate's assets.

16. *What is a guardian?* Do I need to designate one? If you have children under age 18, you should designate a guardian of their ''persons'' to raise them.

17. *What is a custodian?* Do I need to designate one? A ''custodian'' is a person you may designate to manage assets for someone (including a child) who is between ages 18 and 25 and who receives assets under your Will. The custodian manages the assets and pays as much as the custodian determines is proper for health, support, maintenance, and education. The custodian delivers what is left to the person when the person reaches the age you choose (between 18 and 25). No bond is required of a custodian.

18. *Should I ask people if they are willing to serve before I designate them as executor, guardian, or custodian?* Probably yes. Some people and banks and trust companies may not consent to serve or may not be qualified to act.

19. *What happens if I make a gift in this Will to someone and they die before I do?* A person must survive you by 120 hours to take a gift under this Will. If they do not, then the gift fails and goes with the rest of your assets. If the person who does not survive you is a relative of you or your spouse, then certain assets may go to the relative's descendants.

20. *What is a trust?* There are many kinds of trusts, including trusts created by Wills (called ''testamentary trusts'') and trusts created during your lifetime (called ''revocable living trusts''). Both kinds of trusts are long-term arrangements where a manager (called a ''trustee'') invests and manages assets for someone (called a ''beneficiary'') on the terms you specify. Trusts are too complicated to be used in this statutory Will. You should see a lawyer if you want to create a trust.

21. *What is a domestic partner?* You have a domestic partner if you have met certain legal requirements and filed a form entitled ''Declaration of Domestic Partnership'' with the Secretary of State. Notwithstanding Section 299.6 of the Family Code, if you have not filed a Declaration of Domestic Partnership with the Secretary of State, you do not meet the required definition and should not use the section of the

Statutory Will form that refers to domestic partners even if you have registered your domestic partnership with another governmental entity. If you are unsure if you have a domestic partner or if your domestic partnership meets the required definition, please contact the Secretary of State's office.

INSTRUCTIONS

1. *READ THE WILL.* Read the whole Will first. If you do not understand something, ask a lawyer to explain it to you.

2. *FILL IN THE BLANKS.* Fill in the blanks. Follow the instructions in the form carefully. Do not add any words to the Will (except for filling in blanks) or cross out any words.

3. *DATE AND SIGN THE WILL AND HAVE TWO WITNESSES SIGN IT.* Date and sign the Will and have two witnesses sign it. You and the witnesses should read and follow the Notice to Witnesses found at the end of this Will.

CALIFORNIA STATUTORY WILL OF

| |
|---|
| Print Your Full Name |

1. Will. This is my Will. I revoke all prior Wills and codicils.

2. Specific Gift of Personal Residence. (Optional—use only if you want to give your personal residence to a different person or persons than you give the balance of your assets to under paragraph 5 below.) I give my interest in my principal personal residence at the time of my death (subject to mortgages and liens) as follows:

(Select one choice only and sign in the box after your choice.)

a. Choice One: All to my spouse or domestic partner, registered with the California Secretary of State, if my spouse or domestic partner, registered with the California Secretary of State, survives me; otherwise to my descendants (my children and the descendants of my children)who survive me.

b. Choice Two: Nothing to my spouse or domestic partner, registered with the California Secretary of State; all to my descendants (my children and the descendants of my children) who survive me.

c. Choice Three: All to the following person if he or she survives me (Insert the name of the person.):

_____

d. Choice Four: Equally among the following persons who survive me (Insert the names of two or more persons.):

_____

_____

_____

_____

3. Specific Gift of Automobiles, Household and Personal Effects. (Optional—use only if you want to give automobiles and household and personal effects to a different person or persons than you give the balance of your assets to under paragraph 5 below.) I give all of my automobiles (subject to loans), furniture, furnishings, household items, clothing, jewelry, and other tangible articles of a personal nature at the time of my death as follows:

(Select one choice only and sign in the box after your choice.)

a. Choice One: All to my spouse or domestic partner, registered with the California Secretary of State, if my spouse, domestic partner, registered with the California Secretary of State, survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

b. Choice Two: Nothing to my spouse or domestic partner, registered with the California Secretary of State; all to my descendants (my children and the descendants of my children) who survive me.

c. Choice Three: All to the following person if he or she survives me (Insert the name of the person.):

_____

d. Choice Four: Equally among the following persons who survive me (Insert the names of two or more persons.):

_____

_____

_____

_____

4. Specific Gifts of Cash. (Optional) I make the following cash gifts to the persons named below who survive me, or to the named charity, and I sign my name in the box after each gift. If I do not sign in the box, I do not make a gift. (Sign in the box after each gift you make.)

| Name of Person or Charity to receive gift (name one only—please print) | Amount of Cash Gift |
|---|---|
| | Sign your name in this box to make this gift |

| Name of Person or Charity to receive gift (name one only—please print) | Amount of Cash Gift |
|---|---|
| | Sign your name in this box to make this gift |

| Name of Person or Charity to receive gift (name one only—please print) | Amount of Cash Gift |
|---|---|
| | Sign your name in this box to make this gift |

| Name of Person or Charity to receive gift (name one only—please print) | Amount of Cash Gift |
|---|---|
| | Sign your name in this box to make this gift |

| Name of Person or Charity to receive gift (name one only—please print) | Amount of Cash Gift |
|---|---|
| | Sign your name in this box to make this gift |

5. Balance of My Assets. Except for the specific gifts made in paragraphs 2, 3 and 4 above, I give the balance of my assets as follows:

(Select one choice only and sign in the box after your choice. If I sign in more than one box or if I do not sign in any box, the court will distribute my assets as if I did not make a Will.)

a. Choice One: All to my spouse or domestic partner, registered with the California Secretary of State, if my spouse or domestic partner, registered with the California Secretary of State, survives me; otherwise to my descendants (my children and the descendants of my children) who survive me.

b. Choice Two: Nothing to my spouse or domestic partner, registered with the California Secretary of State; all to my descendants (my children and the descendants of my children) who survive me.

c. Choice Three: All to the following person if he or she survives me (Insert the name of the person.):

_____

d. Choice Four: Equally among the following persons who survive me (Insert the names of two or more persons.):

| |
|---|
| |

_____
_____
_____
_____

6. Guardian of the Child's Person. If I have a child under age 18 and the child does not have a living parent at my death, I nominate the individual named below as First Choice as guardian of the person of that child (to raise the child). If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve. Only an individual (not a bank or trust company) may serve.

| Name of First Choice for Guardian of the Person |
|---|
| |

| Name of Second Choice for Guardian of the Person |
|---|
| |

| Name of Third Choice for Guardian of the Person |
|---|
| |

7. Special Provision for Property of Persons Under Age 25. (Optional—unless you use this paragraph, assets that go to a child or other person who is under age 18 may be given to the parent of the person, or to the Guardian named in paragraph 6 above as guardian of the person until age 18, and the court will require a bond, and assets that go to a child or other person who is age 18 or older will be given outright to the person. By using this paragraph you may provide that a custodian will hold the assets for the person until the person reaches any age from 18 to 25 which you choose.) If a beneficiary of this Will is under the age chosen below, I nominate the individual or bank or trust company named below as First Choice as custodian of the property. If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve.

| Name of First Choice for Custodian of Assets |
|---|
| |

| Name of Second Choice for Custodian of Assets |
|---|
| |

| Name of Third Choice for Custodian of Assets |
|---|
| |

Insert any age from 18 to 25 as the age for the person to receive the property:

| |
|---|
| |

(If you do not choose an age, age 18 will apply.)

8. Executor. I nominate the individual or bank or trust company named below as First Choice as executor. If the First Choice does not serve, then I nominate the Second Choice, and then the Third Choice, to serve.

| Name of First Choice for Executor |
|---|
| |

| Name of Second Choice for Executor |
|---|
| |

| Name of Third Choice for Executor |
|---|
| |

9. Bond. My signature in this box means a bond is not required for any person named as executor. A bond may be required if I do not sign in this box:

No bond shall be required. [ ]

(Notice: You must sign this Will in the presence of two (2) adult witnesses. The witnesses must sign their names in your presence and in each other's presence. You must first read to them the following sentence.)

This is my Will: I ask the persons who sign below to be my witnesses.

Signed on _____ (date) at _____ (city), California.

[ ]

Signature of Maker of Will

(Notice to Witnesses: Two (2) adults must sign as witnesses. Each witness must read the following clause before signing. The witnesses should not receive assets under this Will.)

Each of us declares under penalty of perjury under the laws of the State of California that the following is true and correct:

a. On the date written below the maker of this Will declared to us that this instrument was the maker's Will and requested us to act as witnesses to it;

b. We understand this is the maker's Will;

c. The maker signed this Will in our presence, all of us being present at the same time;

d. We now, at the maker's request, and in the maker's and each other's presence, sign below as witnesses;

e. We believe the maker is of sound mind and memory;

f. We believe that this Will was not procured by duress, menace, fraud or undue influence;

g. The maker is age 18 or older; and

h. Each of us is now age 18 or older, is a competent witness, and resides at the address set forth after his or her name.

Dated: _____ , _____

| Signature of witness | Signature of witness |
|---|---|
| Print name here: | Print name here: |
| _____ | _____ |
| Residence address: | Residence address: |
| _____ | _____ |
| _____ | _____ |

AT LEAST TWO WITNESSES MUST SIGN
NOTARIZATION ALONE IS NOT SUFFICIENT

SEC. 53. Section 8461 of the Probate Code is amended to read:

8461. Subject to the provisions of this article, a person in the following relation to the decedent is entitled to appointment as administrator in the following order of priority:

(a) Surviving spouse or domestic partner as defined in Section 37.

(b) Children.

(c) Grandchildren.

(d) Other issue.

(e) Parents.

(f) Brothers and sisters.

(g) Issue of brothers and sisters.

(h) Grandparents.

(i) Issue of grandparents.

(j) Children of a predeceased spouse or domestic partner.

(k) Other issue of a predeceased spouse or domestic partner.

(*l*) Other next of kin.

(m) Parents of a predeceased spouse or domestic partner.

(n) Issue of parents of a predeceased spouse or domestic partner.

(o) Conservator or guardian of the estate acting in that capacity at the time of death who has filed a first account and is not acting as conservator or guardian for any other person.

(p) Public administrator.

(q) Creditors.

(r) Any other person.

SEC. 54. Section 8462 of the Probate Code is amended to read:

8462. The surviving spouse or domestic partner of the decedent, a relative of the decedent, or a relative of a predeceased spouse or domestic partner of the decedent, has priority under Section 8461 only if one of the following conditions is satisfied:

(a) The surviving spouse, domestic partner, or relative is entitled to succeed to all or part of the estate.

(b) The surviving spouse, domestic partner, or relative either takes under the will of, or is entitled to succeed to all or part of the estate of, another deceased person who is entitled to succeed to all or part of the estate of the decedent.

SEC. 55. Section 8465 of the Probate Code is amended to read:

8465. (a) The court may appoint as administrator a person nominated by a person otherwise entitled to appointment or by the guardian or conservator of the estate of a person otherwise entitled to appointment. The nomination shall be made in writing and filed with the court.

(b) If a person making a nomination for appointment of an administrator is the surviving spouse or domestic partner, child, grandchild, other issue, parent, brother or sister, or grandparent of the

decedent, the nominee has priority next after those in the class of the person making the nomination.

(c) If a person making a nomination for appointment of an administrator is other than a person described in subdivision (b), the court in its discretion may appoint either the nominee or a person of a class lower in priority to that of the person making the nomination, but other persons of the class of the person making the nomination have priority over the nominee.

SEC. 56. Section 17021.7 is added to the Revenue and Taxation Code, to read:

17021.7. (a) For purposes of this part, the domestic partner of the taxpayer shall be treated as the spouse of the taxpayer for purposes of applying only Sections 105(b), 106(a), 162(*l*), 162(n), and 213(a) of the Internal Revenue Code and for purposes of determining whether an individual is the taxpayer's ''dependent'' or ''member of their family'' as these terms are used in those sections.

(b) For purposes of this section, the term ''domestic partner'' means an individual partner in a domestic partner relationship within the meaning of Section 297 of the Family Code.

SEC. 57. Section 1030 of the Unemployment Insurance Code is amended to read:

1030. (a) Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of the notice, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

(3) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(4) The claimant left the employer's employ to accompany his or her spouse or domestic partner to or join her or him at a place from which it is impractical to commute to the employment, to which a transfer of the claimant by the employer is not available.

(5) The claimant left the employer's employ to protect his or her children or himself or herself from domestic violence abuse.

The period during which the employer may submit these facts may be extended by the director for good cause.

(b) Any base period employer that is not entitled under Section 1327 to receive notice of the filing of a new or additional claim and is entitled under Section 1329 to receive notice of computation may, within 15 days after mailing of the notice of computation, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(3) The claimant left the employer's employ to accompany his or her spouse or domestic partner to or join her or him at a place from which it is impractical to commute to the employment, to which a transfer of the claimant by the employer is not available.

(4) The claimant left the employer's employ to protect his or her children or himself or herself from domestic violence abuse.

The period during which the employer may submit these facts may be extended by the director for good cause.

(c) The department shall consider these facts together with any information in its possession. If the employer is entitled to a ruling under subdivision (b) or to a determination under Section 1328, the department shall promptly notify the employer of its ruling as to the cause of the termination of the claimant's employment. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect. The director is an interested party to any appeal. The department may for good cause reconsider any ruling or reconsidered ruling within either five days after the date an appeal to an administrative law judge is filed or, if no appeal is filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. However, a ruling or reconsidered ruling that relates to a determination that is reconsidered pursuant to subdivision (a) of Section 1332 may also be reconsidered by the department within the time provided for reconsideration of that determination.

(d) For purposes of this section only, if the claimant voluntarily leaves the employer's employ without notification to the employer of the reasons for the leaving, and if the employer submits all of the facts within its possession concerning the leaving within the applicable time period referred to in this section, the leaving is presumed to be without good cause.

(e) An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party shall not be deemed to have voluntarily left his or her employment without good cause.

SEC. 58. Section 1032 of the Unemployment Insurance Code is amended to read:

1032. If it is ruled under Section 1030 or 1328 that the claimant left the employer's employ voluntarily and without good cause, or left under one of the following circumstances, benefits paid to the claimant subsequent to the termination of employment that are based upon wages earned from the employer prior to the date of the termination of employment shall not be charged to the account of the employer, except as provided by Section 1026, unless the employer failed to furnish the information specified in Section 1030 within the time limit prescribed in that section or unless that ruling is reversed by a reconsidered ruling:

(a) The claimant was discharged by reason of misconduct connected with his or her work.

(b) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(c) The claimant left the employer's employ to accompany his or her spouse or domestic partner to or join her or him at a place from which it is impractical to commute to the employment, to which a transfer of the claimant by the employer is not available.

(d) The claimant left the employer's employ to protect his or her children or himself or herself from domestic violence abuse.

(e) The claimant left the employer's employ to take a substantially better job.

(f) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

For purposes of this section and Section 1030 ''spouse'' includes a person to whom marriage is imminent.

SEC. 59. Section 1256 of the Unemployment Insurance Code is amended to read:

1256. An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work.

An individual is presumed to have been discharged for reasons other than misconduct in connection with his or her work and not to have voluntarily left his or her work without good cause unless his or her employer has given written notice to the contrary to the department as

provided in Section 1327, setting forth facts sufficient to overcome the presumption. The presumption provided by this section is rebuttable.

An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party, shall not be deemed to have left his or her work without good cause.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to accompany his or her spouse or domestic partner to a place from which it is impractical to commute to the employment. For purposes of this section ''spouse'' includes a person to whom marriage is imminent.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect his or her children, or himself or herself, from domestic violence abuse.

An individual shall be deemed to have left his or her most recent work with good cause if he or she elects to be laid off in place of an employee with less seniority pursuant to a provision in a collective bargaining agreement that provides that an employee with more seniority may elect to be laid off in place of an employee with less seniority when the employer has decided to lay off employees.

SEC. 60. Section 2705.1 of the Unemployment Insurance Code is amended to read:

2705.1. Where an individual who would be eligible to receive disability benefits is mentally unable to make a claim therefor, the director shall, in accordance with authorized regulations, allow the filing of a claim for these benefits by the spouse or domestic partner of the individual, in the absence of any other legally authorized representative of the individual. A payment shall be made upon affidavit executed by the spouse or domestic partner or person or persons claiming to be entitled to the benefits and the receipt of the affidavit or affidavits shall fully discharge the Director of Employment Development from any further liability with reference to the payments, without the necessity of inquiring into the truth of any of the facts stated in the affidavit.

For the purposes of this section ''mentally unable to make a claim'' shall be limited to those cases in which the individual is certified by a healing arts practitioner specified in Sections 2708 and 2709 to be mentally unable to make a claim pursuant to this part.

SEC. 61. 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.

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## CHAPTER 894

An act to amend Sections 49075, 49557, and 49558 of, and to add Section 49557.2 to, the Education Code, and to add Sections 10618.5 and 14005.41 to, the Welfare and Institutions Code, relating to human services.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

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

(a) Hundreds of thousands of low-income children in California lack health insurance, despite the fact that they are eligible for publicly funded health insurance programs.

(b) Lack of health insurance frequently results in health problems.

(c) Health problems often interfere with a child's ability to learn.

(d) Despite substantial outreach efforts, many eligible children have not enrolled in current publicly funded health insurance programs.

(e) Many uninsured, low-income children receive free lunch through the National School Lunch Program, pursuant to the National School Lunch Act (42 U.S.C. Sec. 1751 et seq.).

(f) Schools are uniquely positioned to promote student enrollment in health insurance because of their relationship of trust with children and their parents.

(g) Facilitating the participation in health insurance programs of students eligible to receive free lunch at school will maximize federal funds available to currently uninsured children, and thereby enhance the ability of those children to succeed in the classroom.

SEC. 2. Section 49075 of the Education Code is amended to read:

49075. (a) A school district may permit access to pupil records to any person for whom a parent of the pupil has executed written consent specifying the records to be released and identifying the party or class of parties to whom the records may be released. The recipient must be notified that the transmission of the information to others without the written consent of the parent is prohibited. The consent notice shall be permanently kept with the record file.

(b) Notwithstanding subdivision (a), school lunch applications and information shared pursuant to Section 49557.2 shall be retained by any

school district in the manner most useful to the administration of the school lunch program.

SEC. 3. Section 49557 of the Education Code is amended to read:

49557. (a) The governing board of a school district and the county superintendent of schools shall make applications for free or reduced price meals available to students at all times during each regular schoolday. The application shall contain, in at least 8-point boldface type, each of the following statements:

(1) Applications for free and reduced price meals may be submitted at any time during a schoolday.

(2) Children participating in the National School Lunch Program will not be overtly identified by the use of special tokens, special tickets, special serving lines, separate entrances, separate dining areas, or by any other means.

A school district and the county superintendent of schools shall use all other applications it has for free or reduced price meals before utilizing the applications pursuant to this subdivision.

(b) The governing board of each school district and each county superintendent of schools shall formulate a plan, which shall be mailed to the State Department of Education for its approval, that will ensure that children eligible to receive free or reduced priced meals and milk shall not be treated differently from other children. These plans shall ensure each of the following:

(1) Unless otherwise specified, the names of the children shall not be published, posted, or announced in any manner, or used for any other purpose other than the National School Lunch Program.

(2) There shall be no overt identification of any of the children by the use of special tokens or tickets or by any other means.

(3) The children shall not be required to work for their meals or milk.

(4) The children shall not be required to use a separate dining area, go through a separate serving line, enter the dining area through a separate entrance, or consume their meals or milk at a different time.

(c) When more than one lunch or breakfast or type of milk is offered pursuant to this article, the children shall have the same choice of meals or milk that is available to those children who pay the full price for their meal or milk.

SEC. 4. Section 49557.2 is added to the Education Code, to read:

49557.2. (a) (1) Effective July 1, 2002, at the option of the school district or county superintendent, and to the extent necessary to implement Section 14005.41 of the Welfare and Institutions Code, the following information may be incorporated into the School Lunch Program application packet or notification of eligibility for the School Lunch Program using simple and culturally appropriate language:

(A) A notification that if a child qualifies for free school lunches, then the child may qualify for free or reduced-cost health insurance coverage.

(B) A request for the applicant's consent for the child to participate in the Medi-Cal program, if eligible for free school lunches, and to have the information on the school lunch application shared with the local agency that determines eligibility under the Medi-Cal program.

(C) A notification that the school district will not forward the school lunch application to the local agency that determines eligibility under the Medi-Cal program, without the consent of the child's parent or guardian.

(D) A notification that the school lunch application is confidential and, with the exception of forwarding the information for use in health program enrollment upon the consent of the child's parent or guardian, the school district will not share the information with any other governmental agency, including the federal Immigration and Naturalization Service and the Social Security Administration, for any purpose other than administration of the Medi-Cal program.

(E) A notification that the school lunch application information will only be used by the state and local agencies that administer the Medi-Cal program for purposes directly related to the administration of the program and will not be shared with other government agencies, including the Immigration and Naturalization Service and the Social Security Administration, except as necessary to verify information provided by the applicant.

(F) Information regarding the Medi-Cal program, including available services, program requirements, rights and responsibilities, and privacy and confidentiality requirements.

(2) The State Department of Education, in consultation with school districts, county superintendents of schools, consumer advocates, counties, the State Department of Health Services, and other stakeholders, shall make recommendations regarding the School Lunch Program application, on or before February 1, 2002. The recommendations shall include specific changes to the School Lunch Program application materials as necessary to implement Section 14005.41 of the Welfare and Institutions Code, information for staff as to how to implement the changes, and a description of the process by which information on the School Lunch Program application will be shared with the county, as the local agency that determines eligibility under the Medi-Cal program.

(b) (1) Effective July 1, 2002, school districts and county superintendents of schools may implement a process to share information provided on the School Lunch Program application with the local agency that determines eligibility under the Medi-Cal program, and shall share this information with that agency, if the applicant consents to that sharing of information. This information may be shared

electronically, physically, or through whatever method is determined appropriate.

(2) Each school district or county superintendent that chooses to share information pursuant to this subdivision shall enter into a memorandum of understanding with the local agency that determines eligibility under the Medi-Cal program, that sets forth the roles and responsibilities of each agency and the process to be used in sharing the information.

(3) The local agency that determines eligibility under the Medi-Cal program shall only use information provided by applicants on the school lunch application for purposes directly related to the administration of the Medi-Cal program.

(4) After school districts share information regarding the school lunch application with the local agency that determines eligibility under the Medi-Cal program, for the purpose of determining Medi-Cal program eligibility, the local agency and the school district shall not share information about school lunch participation or the Medi-Cal program eligibility information with each other unless specifically authorized under other provisions of law.

SEC. 5. Section 49558 of the Education Code is amended to read:

49558. (a) All applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of any provision of this code relating to free or reduced-price meal eligibility shall be confidential, and shall not be open to examination for any purpose not directly connected with the administration of any free or reduced-price meal program, or any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any free or reduced-price meal program.

(b) Notwithstanding subdivision (a), a public officer or agency may allow the use by school district employees, who are authorized by the governing board of the school district, of individual records pertaining to pupil participation in any free or reduced-price meal program solely for the purpose of disaggregation of academic achievement data if the public agency ensures the following:

(1) The public agency has adopted a policy that allows for the use of individual records for these purposes.

(2) No individual indicators of participation in any free or reduced-price meal program are maintained in the permanent record of any pupil if not otherwise allowed by law.

(3) No public release of information regarding individual pupil participation in any free or reduced-price meal program is permitted.

(4) All other confidentiality provisions required by law are met.

(c) Notwithstanding subdivision (a), the school districts and county superintendents of schools may release information on the School Lunch Program application only to the local agency that determines eligibility under the Medi-Cal program, if the child is approved for free meals and if the applicant consents to the sharing of information pursuant to Section 49557.2.

SEC. 6. Section 10618.5 is added to the Welfare and Institutions Code, to read:

10618.5. (a) The county welfare department shall send any food stamp applicant who is determined to be eligible for food stamps and who does not indicate on his or her application an interest in enrolling in the Medi-Cal program a copy of the notice developed pursuant to subdivision (b).

(b) (1) Each county welfare department shall develop a notice informing individuals identified pursuant to subdivision (a) that they may be entitled to receive Medi-Cal benefits and requesting their permission to use the information in the food stamp recipient's case file to make a determination of eligibility for the Medi-Cal program.

(2) The notice shall also include a request for permission to forward the information in the food stamp recipient's case file to the Healthy Families Program administrator for eligibility determination if the individual is determined to be eligible to participate in the Medi-Cal program with a share of cost, or is determined to be ineligible for Medi-Cal.

(3) To apply for medical assistance under the Medi-Cal program, the food stamp recipient shall sign, date, and return the notice requesting that an eligibility determination be made.

(4) Upon receipt of the notice, the county welfare department shall make an eligibility determination by utilizing the information in the food stamp recipient's case file or paper application. The Medi-Cal application date shall be the date the notice is received by the county welfare department.

(5) If the food stamp case file does not include sufficient information to establish Medi-Cal program eligibility, the county welfare department shall request, either orally or in writing, additional information from the food stamp recipient.

(6) The notice shall be written in culturally and linguistically appropriate language and at an appropriate literacy level. The notice shall include information on the Medi-Cal program and the Healthy Families Program, a telephone number that food stamp recipients may call for additional information, and a prepaid means of returning the notice to the county welfare department to begin the eligibility determination process.

(c) If an individual identified in subdivision (a) or (b) is determined to be eligible to participate in the Medi-Cal program with a share of cost, or is determined to be ineligible for Medi-Cal, information pertinent to the food stamp recipient's eligibility for the Healthy Families Program shall be forwarded by the county welfare department to the Healthy Families Program statewide administrator for immediate processing. If there is insufficient information to establish Healthy Families Program eligibility, the administrator shall request, either orally or in writing, additional information from the food stamp recipient.

(d) Counties shall include the cost of implementing this section in their annual administrative budget requests to the State Department of Health Services.

SEC. 7. Section 14005.41 is added to the Welfare and Institutions Code, to read:

14005.41. (a) Notwithstanding any other provision of law, the department shall deem to have met the income eligibility requirements for participation in the Medi-Cal program, without a share of cost, any child who is less than six years of age and who has been determined to be eligible for free meals under the National School Lunch Program provided for pursuant to Chapter 13 (commencing with Section 1751) of Title 42 of the United States Code.

(b) Notwithstanding any other provision of law, with regard to any child who is enrolled in and attending public school in the State of California, the department shall accept documentation of enrollment for free meals under the National School Lunch Program as sufficient documentation of California residency for that child for the purposes of the Medi-Cal program.

(c) (1) (A) Effective July 1, 2002, notwithstanding any other provision of law, each county shall participate in a statewide pilot project to grant Medi-Cal program eligibility to, and shall enroll in the Medi-Cal program, any child under six years of age and currently enrolled in school in the State of California who is eligible for free meals under the National School Lunch Program upon receipt of proof of participation in the National School Lunch Program and a signed Medi-Cal application as described in subdivision (i). Counties shall notify the parent or guardian that the child has been found eligible for the Medi-Cal program.

(B) Effective July 1, 2002, notwithstanding any other provision of law, each county shall participate in a statewide pilot project to use the procedure described in this subdivision to determine Medi-Cal eligibility without a share of cost, and, if eligible, shall enroll in the Medi-Cal program, any child six years of age or older currently enrolled in school in the State of California who is eligible for free meals under the National School Lunch Program, upon receipt of proof of

participation in the National School Lunch Program and a signed Medi-Cal application as described in subdivision (i). If the county determines from the application as described in subdivision (i) that the child meets the income eligibility requirements for participation in the Medi-Cal program, the county shall notify the parent or guardian that the child has been found eligible for the Medi-Cal program. If the county is unable to determine from the information on the application as described in subdivision (i) whether the family is income eligible, the county shall contact the family to seek any additional information regarding income, household composition, or deductions that the department, in consultation with the county welfare departments, may determine to be necessary to complete the Medi-Cal application. If the county determines that the child does not meet the income eligibility requirements for participation in the Medi-Cal program, the county shall notify the parent or guardian of the determination and shall send the parent or guardian an application for the Healthy Families Program.

(2) Each county shall ask the parent or guardian of each child identified in subparagraph (A) of paragraph (1) and the parent or guardian of each child whom the county determines to meet the income eligibility requirements for participation in the Medi-Cal program under subparagraph (B) of paragraph (1) to provide additional documentation as required by current law necessary for retention of eligibility in the Medi-Cal program. If a parent or guardian does not provide the documentation required for retention of full-scope Medi-Cal program eligibility, the county shall continue the child's enrollment in the Medi-Cal program, but only for the limited scope of Medi-Cal program benefits as described in Section 14007.5.

(d) Nothing in this section shall be construed as preventing the department from verifying eligibility through the Income Eligibility Verification System match mandated by Section 1137 of the federal Social Security Act (42 U.S.C. Sec. 1320b-7) or from requesting additional documentation required by federal law.

(e) Each county shall include its cost of implementing this section in its annual Medi-Cal administrative budget requests submitted to the department.

(f) For purposes of this section, the Medi-Cal program application date shall be the date on which the school lunch application information is received by the local agency determining eligibility under the Medi-Cal program.

(g) (1) This section shall be implemented on July 1, 2002, only if, and to the extent that, federal financial participation is available for the services provided and only for the period of time the free National School Lunch Program utilizes a gross income standard at or below 133

percent of the federal poverty level. This section shall be implemented in a manner consistent with any federal approval.

(2) Notwithstanding paragraph (1), if the department determines that one or more state plan amendments are necessary to ensure full federal financial participation in the provisions of this section, the department shall prepare and submit requests for the state plan amendments to the federal government, after which this section shall not be implemented until the later of the date the department receives approval of all necessary state plan amendments, or July 1, 2002.

(h) (1) Not later than March 1, 2002, the department, in consultation with the State Department of Education and representatives of the school districts, county superintendents of schools, local agencies that administer the Medi-Cal program, consumer advocates, and other stakeholders, shall develop and distribute the policies and procedures, including any all-county letters, necessary to implement Section 49557.2 of the Education Code and this chapter.

(2) The policies and procedures required to be developed and distributed pursuant to subdivision (a) shall include, at a minimum, both of the following:

(A) Processes for the school districts, county superintendents of schools, and local agencies that administer the Medi-Cal program to use in forwarding and processing free school lunch application information pursuant to Section 49557.2 of the Education Code, and in following up with the applicants to obtain any necessary documentation required by federal law.

(B) Instructions for implementing the eligibility provisions of this chapter.

(3) The policies and procedures required to be developed pursuant to subdivision (a) shall specify all of the following:

(A) The information on the school lunch application may be used to initiate a Medi-Cal program application only when the applicant has provided his or her consent pursuant to Section 49557.2 of the Education Code.

(B) The date of the Medi-Cal program application shall be the date on which the school lunch application was received by the local agency that determines eligibility under the Medi-Cal program.

(C) The county, in determining eligibility for the Medi-Cal program, shall request additional documentation only as required by federal law, and shall enroll any child whose parent or guardian does not provide the necessary documentation for full-scope benefits under the Medi-Cal program in the Medi-Cal program with limited scope benefits, as described in Section 14007.5.

(i) To the extent federal financial participation is available, and to the extent administratively feasible, the department shall utilize the free

National School Lunch Application developed under Section 49557.2 of the Education Code, supplemented as needed by disclosures including Medi-Cal rights and responsibility notices and privacy notices, as a Medi-Cal application for children described in this section.

(j) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this section by means of all-county letters or similar instructions without taking regulatory action. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(k) The department shall review the effectiveness of the statewide pilot project and make recommendations regarding appropriate ways to expand the use of the approaches contained in this section.

SEC. 8. It is the intent of the Legislature to enact legislation that provides that the General Fund costs of the implementation of the statewide pilot project shall be supported by the Tobacco Settlement Fund.

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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## CHAPTER 895

An act to amend Section 3 of Chapter 899 of the Statutes of 1995, relating to seismic activity, and making an appropriation therefor.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 3 of Chapter 899 of the Statutes of 1995, as amended by Section 3 of Chapter 796 of the Statutes of 1999, is amended to read:

Sec. 3. The sum of four million four hundred thousand dollars ($4,400,000) is appropriated from the California Residential Earthquake Recovery Fund to the Department of Insurance for the program

established pursuant to this act. During the second half of the 1995–96 fiscal year, the Department of Insurance may use up to one hundred fifty-nine thousand dollars ($159,000) for costs of initial implementation and administration of the program. During the 1996–97 and 1997–98 fiscal years, no more than two hundred thousand dollars ($200,000) per fiscal year may be used by the department to administer this program. Thereafter, no more than two hundred sixty-five thousand dollars ($265,000) per fiscal year may be used by the department to administer the program.

Money appropriated by this section shall be available for expenditure until December 1, 2004. On and after that date, the program established by Chapter 899 of the Statutes of 1995 shall no longer be operative.

SEC. 2. The entire amount of funds not previously appropriated, not to exceed one million five hundred thousand dollars ($1,500,000), is appropriated from the California Residential Earthquake Recovery Fund to the Department of Insurance for the program established pursuant to Chapter 899 of the Statutes of 1995.

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## CHAPTER 896

An act to add Section 17453.1 to the Education Code, relating to surplus property.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 17453.1 is added to the Education Code, to read:

17453.1. (a) Notwithstanding any other provision of law, a school district may sell or lease Internet appliances or personal computers to parents of pupils within the school district, for the purpose of providing access to the school district's educational computer network, at a standard price, not to exceed the cost incurred by the school district in purchasing the Internet appliance or personal computer. A school district that elects to sell or lease Internet appliances or personal computers, as authorized by this section, shall provide access to the school district's educational network for those families that cannot afford access to the school district's educational network. Notwithstanding any other provision of law, in conducting a sale or lease pursuant to this section a school district shall not be required to call for bids or to sell or lease Internet appliances or personal computers to the highest bidder. For

purposes of this section, an ''Internet appliance'' is a technological product that allows a person to connect to, or access, an online educational network.

(b) The Legislature finds and declares that the Internet appliances or personal computers that are sold or leased pursuant to this section are not an essential part of the school district's educational program, but are supplemental to that program.

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## CHAPTER 897

An act to add Section 18925 to the Welfare and Institutions Code, relating to health.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 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) Approximately 1.3 million of California's over 1.8 million uninsured children are eligible for either the Medi-Cal program or the Healthy Families Program.

(2) Lack of insurance coverage for children results in reduced access to medical services, resulting in restricted access to primary and preventive care and increased reliance on emergency rooms and hospitals for treatment.

(3) At least 50 percent of uninsured children who are eligible for the Medi-Cal program or the Healthy Families Program are already enrolled in public programs with similar income eligibility guidelines, including the Food Stamp Program.

(b) It is the intent of the Legislature, therefore, to create outreach and enrollment linkages between the Medi-Cal program and the Healthy Families Program and the Food Stamp Program, to efficiently target eligible children and make the health insurance enrollment process more efficient for those in need of care.

SEC. 2. Section 18925 is added to the Welfare and Institutions Code, to read:

18925. (a) The State Department of Health Services, in conjunction with the State Department of Social Services, shall implement a simplified eligibility process as part of the Food Stamp Program to expedite Medi-Cal program and Healthy Families Program enrollment

for Food Stamp Program recipients, including children and their eligible parents or caretaker relatives who are not enrolled in those programs.

(b) Each county welfare department shall develop a data list of family members residing in eligible food stamp households who are not enrolled in the Medi-Cal program or the Healthy Families Program.

(c) The county welfare department shall develop a notice informing individuals identified pursuant to subdivision (b) that they may be entitled to receive benefits under the Medi-Cal program or the Healthy Families Program.

(d) At the time of the food stamp household's annual recertification, the county welfare department shall send the notice specified in subdivision (c) to the individuals identified in subdivision (b). The notice shall include a request for permission to use the information in the food stamp recipient's case file to make a determination of eligibility for the Medi-Cal program and the Healthy Families Program.

(e) The notice shall be written in culturally and linguistically appropriate language and at an appropriate literacy level. The notice shall include information on the Medi-Cal program and the Healthy Families Program, and a telephone number that food stamp recipients may call for additional information.

(f) To apply for medical assistance under the Medi-Cal program, the food stamp recipient shall sign, date, and return the notice requesting that an eligibility determination be made. Upon receipt of the notice, the county welfare department shall make an eligibility determination by utilizing the information in the food stamp recipient's case file or paper application. The Medi-Cal application date shall be the date the notice is received by the county welfare department. If the food stamp case file does not include sufficient information to establish Medi-Cal program eligibility, the county welfare department shall request, either orally or in writing, additional information from the food stamp recipient.

(g) If the food stamp recipient is determined to be eligible to participate in the Medi-Cal program with a share of cost, or is determined to be ineligible for Medi-Cal, information pertinent to the food stamp recipient's eligibility for the Healthy Families Program shall be forwarded by the county welfare department to the Healthy Families Program statewide administrator for immediate processing. If there is insufficient information to establish Healthy Families Program eligibility, the administrator shall request, either orally or in writing, additional information from the food stamp recipient.

(h) Counties shall include the cost of implementing this section in their annual administrative budget requests to the State Department of Health Services.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains

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

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## CHAPTER 898

An act to amend Sections 128735, 128736, 128737, 128740, 128745, 128750, 128755, and 128765 of, to add Sections 128747 and 128748 to, and to repeal Section 128815 of, the Health and Safety Code, relating to health data.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Public disclosure of the outcomes of surgical and other hospital procedures facilitates public and market accountability, reduces mortality rates, and generally promotes improvement in the quality of medical outcomes. Providing this information to purchasers, consumers, hospitals, and providers will enable all market players to act based on more complete information on quality of care.

(b) Improved collection and dissemination of medical outcomes data by hospital and, for surgical procedures or conditions, by surgeon, will provide hospitals and providers information needed to conduct quality improvement efforts, will improve decisionmaking by purchasers of health care and consumers, will better inform decisions about resource allocation and regulation, and will result in cost savings.

(c) It is, therefore, the intent of the Legislature to facilitate the continuing provision of quality health services throughout the state by providing current, accurate data and information to purchasers, health care service plans, health and disability insurers, consumers, hospitals, and physicians on quality of health care services.

SEC. 2. Section 128735 of the Health and Safety Code is amended to read:

128735. Every organization that operates, conducts, owns, or maintains a health facility, and the officers thereof, shall make and file with the office, at the times as the office shall require, all of the following reports on forms specified by the office that shall be in accord where

applicable with the systems of accounting and uniform reporting required by this part, except the reports required pursuant to subdivision (g) shall be limited to hospitals:

(a) A balance sheet detailing the assets, liabilities, and net worth of the health facility at the end of its fiscal year.

(b) A statement of income, expenses, and operating surplus or deficit for the annual fiscal period, and a statement of ancillary utilization and patient census.

(c) A statement detailing patient revenue by payer, including, but not limited to, Medicare, Medi-Cal, and other payers, and revenue center except that hospitals authorized to report as a group pursuant to subdivision (d) of Section 128760 are not required to report revenue by revenue center.

(d) A statement of cash-flows, including, but not limited to, ongoing and new capital expenditures and depreciation.

(e) A statement reporting the information required in subdivisions (a), (b), (c), and (d) for each separately licensed health facility operated, conducted, or maintained by the reporting organization, except those hospitals authorized to report as a group pursuant to subdivision (d) of Section 128760.

(f) Data reporting requirements established by the office shall be consistent with national standards, as applicable.

(g) A Hospital Discharge Abstract Data Record that includes all of the following:

(1) Date of birth.

(2) Sex.

(3) Race.

(4) ZIP Code.

(5) Principal language spoken.

(6) Patient social security number, if it is contained in the patient's medical record.

(7) Prehospital care and resuscitation, if any, including all of the following:

(A) ''Do not resuscitate'' (DNR) order at admission.

(B) ''Do not resuscitate'' (DNR) order after admission.

(8) Admission date.

(9) Source of admission.

(10) Type of admission.

(11) Discharge date.

(12) Principal diagnosis and whether the condition was present at admission.

(13) Other diagnoses and whether the conditions were present at admission.

(14) External cause of injury.

(15) Principal procedure and date.
(16) Other procedures and dates.
(17) Total charges.
(18) Disposition of patient.
(19) Expected source of payment.
(20) Elements added pursuant to Section 128738.

(h) It is the expressed intent of the Legislature that the patient's rights of confidentiality shall not be violated in any manner. Patient social security numbers and any other data elements that the office believes could be used to determine the identity of an individual patient shall be exempt from the disclosure requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(i) No person reporting data pursuant to this section shall be liable for damages in any action based on the use or misuse of patient-identifiable data that has been mailed or otherwise transmitted to the office pursuant to the requirements of subdivision (g).

(j) A hospital shall use coding from the International Classification of Diseases in reporting diagnoses and procedures.

SEC. 3. Section 128736 of the Health and Safety Code is amended to read:

128736. (a) Each hospital shall file an Emergency Care Data Record for each patient encounter in a hospital emergency department. The Emergency Care Data Record shall include all of the following:
(1) Date of birth.
(2) Sex.
(3) Race.
(4) Ethnicity.
(5) Principal language spoken.
(6) ZIP Code.
(7) Patient social security number, if it is contained in the patient's medical record.
(8) Service date.
(9) Principal diagnosis.
(10) Other diagnoses.
(11) Principal external cause of injury.
(12) Other external cause of injury.
(13) Principal procedure.
(14) Other procedures.
(15) Disposition of patient.
(16) Expected source of payment.
(17) Elements added pursuant to Section 128738.

(b) It is the expressed intent of the Legislature that the patient's rights of confidentiality shall not be violated in any manner. Patient social

security numbers and any other data elements that the office believes could be used to determine the identity of an individual patient shall be exempt from the disclosure requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) No person reporting data pursuant to this section shall be liable for damages in any action based on the use or misuse of patient-identifiable data that has been mailed or otherwise transmitted to the office pursuant to the requirements of subdivision (a).

(d) Data reporting requirements established by the office shall be consistent with national standards as applicable.

(e) This section shall become operative on January 1, 2002.

SEC. 4. Section 128737 of the Health and Safety Code is amended to read:

128737. (a) Each hospital and freestanding ambulatory surgery clinic shall file an Ambulatory Surgery Data Record for each patient encounter during which at least one ambulatory surgery procedure is performed. The Ambulatory Surgery Data Record shall include all of the following:

(1) Date of birth.
(2) Sex.
(3) Race.
(4) Ethnicity.
(5) Principal language spoken.
(6) ZIP Code.
(7) Patient social security number, if it is contained in the patient's medical record.
(8) Service date.
(9) Principal diagnosis.
(10) Other diagnoses.
(11) Principal procedure.
(12) Other procedures.
(13) Principal external cause of injury, if known.
(14) Other external cause of injury, if known.
(15) Disposition of patient.
(16) Expected source of payment.
(17) Elements added pursuant to Section 128738.

(b) It is the expressed intent of the Legislature that the patient's rights of confidentiality shall not be violated in any manner. Patient social security numbers and any other data elements that the office believes could be used to determine the identity of an individual patient shall be exempt from the disclosure requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) No person reporting data pursuant to this section shall be liable for damages in any action based on the use or misuse of patient-identifiable data that has been mailed or otherwise transmitted to the office pursuant to the requirements of subdivision (a).

(d) Data reporting requirements established by the office shall be consistent with national standards as applicable.

(e) This section shall become operative on January 1, 2002.

SEC. 5. Section 128740 of the Health and Safety Code is amended to read:

128740. (a) Commencing with the first calendar quarter of 1992, the following summary financial and utilization data shall be reported to the office by each hospital within 45 days of the end of every calendar quarter. Adjusted reports reflecting changes as a result of audited financial statements may be filed within four months of the close of the hospital's fiscal or calendar year. The quarterly summary financial and utilization data shall conform to the uniform description of accounts as contained in the Accounting and Reporting Manual for California Hospitals and shall include all of the following:

(1) Number of licensed beds.

(2) Average number of available beds.

(3) Average number of staffed beds.

(4) Number of discharges.

(5) Number of inpatient days.

(6) Number of outpatient visits.

(7) Total operating expenses.

(8) Total inpatient gross revenues by payer, including Medicare, Medi-Cal, county indigent programs, other third parties, and other payers.

(9) Total outpatient gross revenues by payer, including Medicare, Medi-Cal, county indigent programs, other third parties, and other payers.

(10) Deductions from revenue in total and by component, including the following: Medicare contractual adjustments, Medi-Cal contractual adjustments, and county indigent program contractual adjustments, other contractual adjustments, bad debts, charity care, restricted donations and subsidies for indigents, support for clinical teaching, teaching allowances, and other deductions.

(11) Total capital expenditures.

(12) Total net fixed assets.

(13) Total number of inpatient days, outpatient visits, and discharges by payer, including Medicare, Medi-Cal, county indigent programs, other third parties, self-pay, charity, and other payers.

(14) Total net patient revenues by payer including Medicare, Medi-Cal, county indigent programs, other third parties, and other payers.

(15) Other operating revenue.

(16) Nonoperating revenue net of nonoperating expenses.

(b) Hospitals reporting pursuant to subdivision (d) of Section 128760 may provide the items in paragraphs (7), (8), (9), (10), (14), (15), and (16) of subdivision (a) on a group basis, as described in subdivision (d) of Section 128760.

(c) The office shall make available at cost, to any person, a hard copy of any hospital report made pursuant to this section and in addition to hard copies, shall make available at cost, a computer tape of all reports made pursuant to this section within 105 days of the end of every calendar quarter.

(d) The office, with the advice of the commission, shall adopt by regulation guidelines for the identification, assessment, and reporting of charity care services. In establishing the guidelines, the office shall consider the principles and practices recommended by professional health care industry accounting associations for differentiating between charity services and bad debts. The office shall further conduct the onsite validations of health facility accounting and reporting procedures and records as are necessary to assure that reported data are consistent with regulatory guidelines.

This section shall become operative January 1, 1992.

SEC. 6. Section 128745 of the Health and Safety Code is amended to read:

128745. (a) Commencing July 1993, and annually thereafter, the office shall publish risk-adjusted outcome reports in accordance with the following schedule:

| Publication Date | Period Covered | Procedures and Conditions Covered |
|---|---|---|
| July 1993 | 1988–90 | 3 |
| July 1994 | 1989–91 | 6 |
| July 1995 | 1990–92 | 9 |

Reports for subsequent years shall include conditions and procedures and cover periods as appropriate.

(b) The procedures and conditions required to be reported under this chapter shall be divided among medical, surgical and obstetric conditions or procedures and shall be selected by the office, based on the recommendations of the commission and the advice of the technical advisory committee set forth in subdivision (j) of Section 128725. The

office shall publish the risk-adjusted outcome reports for surgical procedures by individual hospital and individual surgeon unless the office in consultation with the technical advisory committee and medical specialists in the relevant area of practice determines that it is not appropriate to report by individual surgeon. The office, in consultation with the technical advisory committee and medical specialists in the relevant area of practice, may decide to report nonsurgical procedures and conditions by individual physician when it is appropriate. The selections shall be in accordance with all of the following criteria:

(1) The patient discharge abstract contains sufficient data to undertake a valid risk adjustment. The risk adjustment report shall ensure that public hospitals and other hospitals serving primarily low-income patients are not unfairly discriminated against.

(2) The relative importance of the procedure and condition in terms of the cost of cases and the number of cases and the seriousness of the health consequences of the procedure or condition.

(3) Ability to measure outcome and the likelihood that care influences outcome.

(4) Reliability of the diagnostic and procedure data.

(c) (1) In addition to any other established and pending reports, on or before July 1, 2002, the office shall publish a risk-adjusted outcome report for coronary artery bypass graft surgery by hospital for all hospitals opting to participate in the report. This report shall be updated on or before July 1, 2003.

(2) In addition to any other established and pending reports, commencing July 1, 2004, and every year thereafter, the office shall publish risk-adjusted outcome reports for coronary artery bypass graft surgery for all coronary artery bypass graft surgeries performed in the state. In each year, the reports shall compare risk-adjusted outcomes by hospital, and in every other year, by hospital and cardiac surgeon. Upon the recommendation of the technical advisory committee based on statistical and technical considerations, information on individual hospitals and surgeons may be excluded from the reports.

(3) Unless otherwise recommended by the clinical panel established by Section 128748, the office shall collect the same data used for the most recent risk-adjusted model developed for the California Coronary Artery Bypass Graft Mortality Reporting Program. Upon recommendation of the clinical panel, the office may add any clinical data elements included in the Society of Thoracic Surgeons' data base. Prior to any additions from the Society of Thoracic Surgeons' data base, the following factors shall be considered:

(A) Utilization of sampling to the maximum extent possible.

(B) Exchange of data elements as opposed to addition of data elements.

(4) Upon recommendation of the clinical panel, the office may add, delete or revise clinical data elements, but shall add no more than a net of six elements not included in the Society of Thoracic Surgeons' data base, to the data set over any five-year period. Prior to any additions or deletions, all of the following factors shall be considered:

(A) Utilization of sampling to the maximum extent possible.

(B) Feasibility of collecting data elements.

(C) Costs and benefits of collection and submission of data.

(D) Exchange of data elements as opposed to addition of data elements.

(5) The office shall collect the minimum data necessary for purposes of testing or validating a risk-adjusted model for the coronary artery bypass graft report.

(d) The annual reports shall compare the risk-adjusted outcomes experienced by all patients treated for the selected conditions and procedures in each California hospital during the period covered by each report, to the outcomes expected. Outcomes shall be reported in the five following groupings for each hospital:

(1) ''Much higher than average outcomes,'' for hospitals with risk-adjusted outcomes much higher than the norm.

(2) ''Higher than average outcomes,'' for hospitals with risk-adjusted outcomes higher than the norm.

(3) ''Average outcomes,'' for hospitals with average risk-adjusted outcomes.

(4) ''Lower than average outcomes,'' for hospitals with risk-adjusted outcomes lower than the norm.

(5) ''Much lower than average outcomes,'' for hospitals with risk-adjusted outcomes much lower than the norm.

(e) For coronary artery bypass graft surgery reports and any other outcome reports for which auditing is appropriate, the office shall conduct periodic auditing of data at hospitals.

(f) The office shall publish in the annual reports required under this section the risk-adjusted mortality rate for each hospital and for those reports that include physician reporting, for each physician.

(g) The office shall either include in the annual reports required under this section, or make separately available at cost to any person requesting it, risk-adjusted outcomes data assessing the statistical significance of hospital or physician data at each of the following three levels: 99 percent confidence level (0.01 p-value), 95 percent confidence level (0.05 p-value), and 90 percent confidence level (.10 p-value). The office shall include any other analysis or comparisons of the data in the annual reports required under this section that the office deems appropriate to further the purposes of this chapter.

SEC. 7. Section 128747 is added to the Health and Safety Code, to read:

128747. Commencing July 1, 2002, and biennially thereafter, the office shall evaluate the impact of the office's published risk-adjusted outcome reports required by Sections 128745 and 128746 on mortality rates in California and on any other measure of quality the office deems appropriate. The office shall also coordinate with other state agencies in promoting prevention and educational initiatives on those reported procedures and conditions.

SEC. 8. Section 128748 is added to the Health and Safety Code, to read:

128748. (a) This section shall apply to any risk-adjusted outcome report that includes reporting of data by an individual physician.

(b) (1) The office shall obtain data necessary to complete a risk-adjusted outcome report from hospitals. If necessary data for an outcome report is available only from the office of a physician and not the hospital where the patient received treatment, then the hospital shall make a reasonable effort to obtain the data from the physician's office and provide the data to the office. In the event that the office finds any errors, omissions, discrepancies, or other problems with submitted data, the office shall contact either the hospital or physician's office that maintains the data to resolve the problems.

(2) The office shall collect the minimum data necessary for purposes of testing or validating a risk-adjusted model. Except for data collected for purposes of testing or validating a risk-adjusted model, the office shall not collect data for an outcome report nor issue an outcome report until the clinical panel established pursuant to this section has approved the risk-adjusted model.

(c) For each risk-adjusted outcome report on a medical, surgical, or obstetric condition or procedure that includes reporting of data by an individual physician, the office director shall appoint a clinical panel, which shall have nine members. Three members shall be appointed from a list of three or more names submitted by the physician specialty society that most represents physicians performing the medical, surgical, and obstetric procedure for which data is collected. Three members shall be appointed from a list of three or more names submitted by the California Medical Association. Three members shall be appointed from lists of names submitted by consumer organizations. At least one-half of the appointees from the lists submitted by the physician specialty society and the California Medical Association, and at least one appointee from the lists submitted by consumer organizations, shall be experts in collecting and reporting outcome measurements for physicians or hospitals. The panel may include physicians from another state. The

panel shall review and approve the development of the risk-adjustment model to be used in preparation of the outcome report.

(d) For the clinical panel authorized by subdivision (c) for coronary artery bypass graft surgery, three members shall be appointed from a list of three or more names submitted by the California Chapter of the American College of Cardiology. Three members shall be appointed from list of three or more names submitted by the California Medical Association. Three members shall be appointed from lists of names submitted by consumer organizations. At least one-half of the appointees from the lists submitted by the California Chapter of the American College of Cardiology, and the California Medical Association, and at least one appointee from the lists submitted by consumer organizations, shall be experts in collecting and reporting outcome measurements for physicians and surgeons or hospitals. The panel may include physicians from another state. The panel shall review and approve the development of the risk-adjustment model to be used in preparation of the outcome report.

(e) Any report that includes reporting by an individual physician shall include, at a minimum, the risk-adjusted outcome data for each physician. The office may also include in the report, after consultation with the clinical panel, any explanatory material, comparisons, groupings, and other information to facilitate consumer comprehension of the data.

(f) Members of a clinical panel shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the clinical panel.

SEC. 9. Section 128750 of the Health and Safety Code is amended to read:

128750. (a) Prior to the public release of the annual outcome reports, the office shall furnish a preliminary report to each hospital that is included in the report. The office shall allow the hospital and chief of staff 60 days to review the outcome scores and compare the scores to other California hospitals. A hospital or its chief of staff that believes that the risk-adjusted outcomes do not accurately reflect the quality of care provided by the hospital may submit a statement to the office, within the 60 days, explaining why the outcomes do not accurately reflect the quality of care provided by the hospital. The statement shall be included in an appendix to the public report, and a notation that the hospital or its chief of staff has submitted a statement shall be displayed wherever the report presents outcome scores for the hospital.

(b) (1) Prior to the public release of any outcome report that includes data by a physician, the office shall furnish a preliminary report to each physician that is included in the report. The office shall allow the physician 30 days from the date the office sends the report to the

physician to review the outcome scores and compare the scores to other California physicians. A physician who believes that the risk-adjusted outcome does not accurately reflect the quality of care provided by the physician may submit a statement to the office within the 30 days, explaining why the outcomes do not accurately reflect the quality of care provided by the physician.

(2) The office shall promptly review the physician's statement and shall respond to the physician with one of the following conclusions:

(A) The physician's statement reveals a flaw in the accuracy of the reported data relating to the physician that materially diminishes the validity of the report. If this finding is made, the data for that physician shall not be included in the report until the flaw in the physician's data is corrected.

(B) The physician's statement reveals a flaw in the risk-adjustment model that materially diminishes the value of the report for all physicians. If this finding is made, the report using that risk-adjustment model shall not be issued until the flaw is corrected.

(C) The physician's statement does not reveal a flaw in either the accuracy of the reported data relating to the physician or the risk-adjustment model in which case the report shall be used, unless the physician chooses to use the procedure set forth in paragraph (3).

(3) If a physician is not satisfied with the conclusion reached by the office, the physician shall notify the office of that fact. Upon receipt of the notice, the office shall forward the physician's statement to the appropriate clinical panel appointed pursuant to Section 128748. The office shall forward the physician's statement with any information identifying the physician or the physician's hospital redacted, or shall adopt other means to ensure the physician's identity is not revealed to the panel. The clinical panel shall promptly review the physician statement and the conclusion of the office and shall respond by either upholding the conclusion or reaching one of the other conclusions set forth in this subdivision. The panel decision shall be the final determination regarding the physician's statement. The process set forth in this subdivision shall be completed within 60 days from the date the office sends the report to each physician included in the report. If a decision by either the office or the clinical panel cannot be reached within the 60-day period, then the outcome report may be issued but shall not include data for the physician submitting the statement.

(c) The office shall, in addition to public reports, provide hospitals and the chiefs of staff of the medical staffs with a report containing additional detailed information derived from data summarized in the public outcome reports as an aid to internal quality assurance.

(d) If, pursuant to the recommendations of the office, based on the advice of the commission, in response to the recommendations of the

technical advisory committee made pursuant to subdivision (d) of this section, the Legislature subsequently amends Section 128735 to authorize the collection of additional discharge data elements, then the outcome reports for conditions and procedures for which sufficient data is not available from the current abstract record will be produced following the collection and analysis of the additional data elements.

(e) The recommendations of the technical advisory committee for the addition of data elements to the discharge abstract should take into consideration the technical feasibility of developing reliable risk-adjustment factors for additional procedures and conditions as determined by the technical advisory committee with the advice of the research community, physicians and surgeons, hospitals, consumer or patient advocacy groups, and medical records personnel.

(f) The technical advisory committee at a minimum shall identify a limited set of core clinical data elements to be collected for all of the added procedures and conditions and unique clinical variables necessary for risk adjustment of specific conditions and procedures selected for the outcomes report program. In addition, the committee should give careful consideration to the costs associated with the additional data collection and the value of the specific information to be collected.

(g) The technical advisory committee shall also engage in a continuing process of data development and refinement applicable to both current and prospective outcome studies.

SEC. 10. Section 128755 of the Health and Safety Code is amended to read:

128755. (a) (1) Hospitals shall file the reports required by subdivisions (a), (b), (c), and (d) of Section 128735 with the office within four months after the close of the hospital's fiscal year except as provided in paragraph (2).

(2) If a licensee relinquishes the facility license or puts the facility license in suspense, the last day of active licensure shall be deemed a fiscal year end.

(3) The office shall make the reports filed pursuant to this subdivision available no later than three months after they were filed.

(b) (1) Skilled nursing facilities, intermediate care facilities, intermediate care facilities/developmentally disabled, and congregate living facilities, including nursing facilities certified by the state department to participate in the Medi-Cal program, shall file the reports required by subdivisions (a), (b), (c), and (d) of Section 128735 with the office within four months after the close of the facility's fiscal year, except as provided in paragraph (2).

(2) (A) If a licensee relinquishes the facility license or puts the facility licensure in suspense, the last day of active licensure shall be deemed a fiscal year end.

(B) If a fiscal year end is created because the facility license is relinquished or put in suspense, the facility shall file the reports required by subdivisions (a), (b), (c), and (d) of Section 128735 within two months after the last day of active licensure.

(3) The office shall make the reports filed pursuant to paragraph (1) available not later than three months after they are filed.

(4) (A) Effective for fiscal years ending on or after December 31, 1991, the reports required by subdivisions (a), (b), (c), and (d) of Section 128735 shall be filed with the office by electronic media, as determined by the office.

(B) Congregate living health facilities are exempt from the electronic media reporting requirements of subparagraph (A).

(c) A hospital shall file the reports required by subdivision (g) of Section 128735 as follows:

(1) For patient discharges on or after January 1, 1999, through December 31, 1999, the reports shall be filed semiannually by each hospital or its designee not later than six months after the end of each semiannual period, and shall be available from the office no later than six months after the date that the report was filed.

(2) For patient discharges on or after January 1, 2000, through December 31, 2000, the reports shall be filed semiannually by each hospital or its designee not later than three months after the end of each semiannual period. The reports shall be filed by electronic tape, diskette, or similar medium as approved by the office. The office shall approve or reject each report within 15 days of receiving it. If a report does not meet the standards established by the office, it shall not be approved as filed and shall be rejected. The report shall be considered not filed as of the date the facility is notified that the report is rejected. A report shall be available from the office no later than 15 days after the date that the report is approved.

(3) For patient discharges on or after January 1, 2001, the reports shall be filed by each hospital or its designee for report periods and at times determined by the office. The reports shall be filed by online transmission in formats consistent with national standards for the exchange of electronic information. The office shall approve or reject each report within 15 days of receiving it. If a report does not meet the standards established by the office, it shall not be approved as filed and shall be rejected. The report shall be considered not filed as of the date the facility is notified that the report is rejected. A report shall be available from the office no later than 15 days after the date that the report is approved.

(d) The reports required by subdivision (a) of Section 128736 shall be filed by each hospital for report periods and at times determined by the office. The reports shall be filed by online transmission in formats

consistent with national standards for the exchange of electronic information. The office shall approve or reject each report within 15 days of receiving it. If a report does not meet the standards established by the office, it shall not be approved as filed and shall be rejected. The report shall be considered not filed as of the date the facility is notified that the report is rejected. A report shall be available from the office no later than 15 days after the report is approved.

(e) The reports required by subdivision (a) of Section 128737 shall be filed by each hospital or freestanding ambulatory surgery clinic for report periods and at times determined by the office. The reports shall be filed by online transmission in formats consistent with national standards for the exchange of electronic information. The office shall approve or reject each report within 15 days of receiving it. If a report does not meet the standards established by the office, it shall not be approved as filed and shall be rejected. The report shall be considered not filed as of the date the facility is notified that the report is rejected. A report shall be available from the office no later than 15 days after the report is approved.

(f) Facilities shall not be required to maintain a full-time electronic connection to the office for the purposes of online transmission of reports as specified in subdivisions (c), (d), and (e). The office may grant exemptions to the online transmission of data requirements for limited periods to facilities. An exemption may be granted only to a facility that submits a written request and documents or demonstrates a specific need for an exemption. Exemptions shall be granted for no more than one year at a time, and for no more than a total of five consecutive years.

(g) The reports referred to in paragraph (2) of subdivision (a) of Section 128730 shall be filed with the office on the dates required by applicable law and shall be available from the office no later than six months after the date that the report was filed.

(h) The office shall post on its Web site and make available to any person a copy of any report referred to in subdivision (a), (b), (c), (d), or (g) of Section 128735, subdivision (a) of Section 128736, subdivision (a) of Section 128737, Section 128740, and, in addition, shall make available in electronic formats reports referred to in subdivision (a), (b), (c), (d), or (g) of Section 128735, subdivision (a) of Section 128736, subdivision (a) of Section 128737, Section 128740, and subdivisions (a) and (c) of Section 128745, unless the office determines that an individual patient's rights of confidentiality would be violated. The office shall make the reports available at cost.

SEC. 11. Section 128765 of the Health and Safety Code is amended to read:

128765. (a) The office, with the advice of the commission, shall maintain a file of all the reports filed under this chapter at its Sacramento

office. The office shall also post all reports on its Web site. Subject to any rules the office, with the advice of the commission, may prescribe, these reports shall be produced and made available for inspection upon the demand of any person, with the exception of hospital discharge abstract data that shall be available for public inspection unless the office determines that an individual patient's rights of confidentiality would be violated.

(b) The reports filed under this chapter shall include an executive summary, written in plain English to the maximum extent practicable, that shall include, but not be limited to, a discussion of findings, conclusions, and trends concerning the overall quality of medical outcomes, including a comparison to reports from prior years, for the procedure or condition studied by the report. The office shall disseminate the reports as widely as practical to interested parties, including, but not limited to, hospitals, providers, the media, purchasers of health care, consumer or patient advocacy groups, and individual consumers.

(c) Copies certified by the office as being true and correct, copies of reports properly filed with the office pursuant to this chapter, together with summaries, compilations, or supplementary reports prepared by the office, shall be introduced as evidence, where relevant, at any hearing, investigation, or other proceeding held, made, or taken by any state, county, or local governmental agency, board, or commission that participates as a purchaser of health facility services pursuant to the provisions of a publicly financed state or federal health care program. Each of these state, county, or local governmental agencies, boards, and commissions shall weigh and consider the reports made available to it pursuant to the provisions of this subdivision in its formulation and implementation of policies, regulations, or procedures regarding reimbursement methods and rates in the administration of these publicly financed programs.

(d) The office, with the advice of the commission, shall compile and publish summaries of the data for the purpose of public disclosure. The commission shall approve the policies and procedures relative to the manner of data disclosure to the public. The office, with the advice of the commission, may initiate and conduct studies as it determines will advance the purposes of this chapter.

(e) In order to assure that accurate and timely data are available to the public in useful formats, the office shall establish a public liaison function. The public liaison shall provide technical assistance to the general public on the uses and applications of individual and aggregate health facility data and shall provide the director and the commission with an annual report on changes that can be made to improve the public's access to data.

(f) In addition to its public liaison function, the office shall continue the publication of aggregate industry and individual health facility cost and operational data published by the California Health Facilities Commission as described in subdivision (b) of Section 441.95, as that section existed on December 31, 1985. This publication shall be submitted to the Legislature not later than March 1 of each year commencing with calendar year 1986 and in addition shall be offered for sale as a public document.

SEC. 12. Section 128815 of the Health and Safety Code is repealed.

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## CHAPTER 899

An act to add Title 11.7 (commencing with Section 423) of Part 1 of, and to add and repeal Title 5.7 (commencing with Section 13775) to Part 4 of, the Penal Code, relating to the protection of constitutional rights.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. The Legislature finds the following:

(a) Federal law enforcement activities proved effective between 1993 and 2001, in reducing and punishing crimes intended to violate a woman's right to reproductive choice. However, the level and threat of those crimes in 2001 remained unacceptably high, and continued and increased law enforcement remained necessary.

(b) Federal actions that proved effective in reducing and punishing these crimes include the vigorous criminal and civil enforcement of the Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248) by the United States Department of Justice and the United States Attorney's Office; the creation by the United States Department of Justice of the national Task Force on Violence Against Health Care Providers that gathers and analyzes information, which is made available to law enforcement agencies and prosecutors, on threats against reproductive health service providers and those persons suspected of engaging in this activity; the creation by the United States Attorney's Office of regional task forces on violence against abortion providers that coordinate federal, state, and local law enforcement efforts in connection with preventing this activity; the provision of instruction by the United States Marshals Service to ensure reproductive health services providers are able to promptly communicate threats they receive to the appropriate federal, state, and local law enforcement

officials; other security training and advice provided by the United States Marshals Services and the Bureau of Alcohol, Tobacco and Firearms to reproductive health service providers; the protection provided by the United States Marshals Service, the Bureau of Alcohol, Tobacco, and Firearms, and the Federal Bureau of Investigation to those persons most at risk from anti-reproductive-rights crime; the training of law enforcement officers and reproductive health services providers in regional sessions sponsored by the United States Attorney's Offices in cooperation with the Feminist Majority Foundation, the National Abortion Federation, and the Planned Parenthood Federation of America, and certified by the Commission on Peace Officer Standards and Training; and the instruction provided by the United States Department of Justice and Federal Bureau of Investigation personnel in those training sessions.

(c) It is the intent of the Legislature that state and local law enforcement agencies continue and build on these services in California.

(d) (1) It is the intent of the Legislature that the Commission on Peace Officer Standards and Training, pursuant to Section 13778 of the Penal Code and in cooperation with the Department of Justice and other subject matter experts, provide for regular, periodic, continuing professional training of peace officers throughout California, and that this training take place in conjunction, when appropriate, with training of reproductive health service providers funded by noncommission sources.

(2) It is the intent of the Legislature that training pursuant to Section 13778 of the Penal Code include information on crimes, including antigovernment extremist crimes and certain hate crimes motivated by hostility to real or perceived ethnic background or sexual orientation, commonly committed by some of the same persons who commonly commit anti-reproductive-rights crimes of violence. Likewise, it is the intent of the Legislature that the guidelines and course of instruction and training pursuant to Section 13519.6 of the Penal Code include information on these crimes.

(e) Nothing in this act is intended to define anti-reproductive-rights crimes or antigovernment extremist crimes as hate crimes, or otherwise to expand or change the definition of hate crimes.

(f) It is the intent of the Legislature that nothing in this act, and no action by anyone pursuant to this act, stigmatize anyone solely because of his or her political or religious beliefs, because of his or her advocacy of any lawful actions, or because of his or her exercise of the rights of free speech or freedom of religion, and that nothing in this act, and no actions by anyone pursuant to this act, otherwise harm anyone because of his or her beliefs, constitutionally protected speech, or lawful actions.

SEC. 2. Title 11.7 (commencing with Section 423) is added to Part 1 of the Penal Code, to read:

## TITLE 11.7. CALIFORNIA FREEDOM OF ACCESS TO CLINIC AND CHURCH ENTRANCES ACT

423. This title shall be known and may be cited as the California Freedom of Access to Clinic and Church Entrances Act, or the California FACE Act.

423.1. The following definitions apply for the purposes of this title:

(a) ''Crime of violence'' means an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.

(b) ''Interfere with'' means to restrict a person's freedom of movement.

(c) ''Intimidate'' means to place a person in reasonable apprehension of bodily harm to herself or himself or to another.

(d) ''Nonviolent'' means conduct that would not constitute a crime of violence.

(e) ''Physical obstruction'' means rendering ingress to or egress from a reproductive health services facility or to or from a place of religious worship impassable to another person, or rendering passage to or from a reproductive health services facility or a place of religious worship unreasonably difficult or hazardous to another person.

(f) ''Reproductive health services'' means reproductive health services provided in a hospital, clinic, physician's office, or other facility and includes medical, surgical, counseling, or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

(g) ''Reproductive health services client, provider, or assistant'' means a person or entity that is or was involved in obtaining, seeking to obtain, providing, seeking to provide, or assisting or seeking to assist another person, at that other person's request, to obtain or provide any services in a reproductive health services facility, or a person or entity that is or was involved in owning or operating or seeking to own or operate, a reproductive health services facility.

(h) ''Reproductive health services facility'' includes a hospital, clinic, physician's office, or other facility that provides or seeks to provide reproductive health services and includes the building or structure in which the facility is located.

423.2. Every person who, except a parent or guardian acting towards his or her minor child or ward, commits any of the following acts shall be subject to the punishment specified in Section 423.3.

(a) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant.

(b) By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.

(c) By nonviolent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant.

(d) By nonviolent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.

(e) Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services client, provider, assistant, or facility.

(f) Intentionally damages or destroys the property of a place of religious worship.

423.3. (a) A first violation of subdivision (c) or (d) of Section 423.2 is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed two thousand dollars ($2,000).

(b) A second or subsequent violation of subdivision (c) or (d) of Section 423.2 is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than six months and a fine not to exceed five thousand dollars ($5,000).

(c) A first violation of subdivision (a), (b), (e), or (f) of Section 423.2 is a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year and a fine not to exceed twenty-five thousand dollars ($25,000).

(d) A second or subsequent violation of subdivision (a), (b), (e), or (f) of Section 423.2 is a misdemeanor, punishable by imprisonment in a

county jail for a period of not more than one year and a fine not to exceed fifty thousand dollars ($50,000).

(e) In imposing fines pursuant to this section, the court shall consider applicable factors in aggravation and mitigation set out in Rules 4.421 and 4.423 of the California Rules of Court, and shall consider a prior violation of the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), or a prior violation of a statute of another jurisdiction that would constitute a violation of Section 423.2 or of the federal Freedom of Access to Clinic Entrances Act of 1994, to be a prior violation of Section 423.2.

(f) This title establishes concurrent state jurisdiction over conduct that is also prohibited by the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), which provides for more severe misdemeanor penalties for first violations and felony-misdemeanor penalties for second and subsequent violations. State law enforcement agencies and prosecutors shall cooperate with federal authorities in the prevention, apprehension, and prosecution of these crimes, and shall seek federal prosecutions when appropriate.

(g) No person shall be convicted under this article for conduct in violation of Section 423.2 that was done on a particular occasion where the identical conduct on that occasion was the basis for a conviction of that person under the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248).

423.4. (a) A person aggrieved by a violation of Section 423.2 may bring a civil action to enjoin the violation, for compensatory and punitive damages, and for the costs of suit and reasonable fees for attorneys and expert witnesses, except that only a reproductive health services client, provider, or assistant may bring an action under subdivision (a), (c), or (e) of Section 423.2, and only a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom in a place of religious worship, or the entity that owns or operates a place of religious worship, may bring an action under subdivision (b), (d), or (f) of Section 423.2. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of a final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of one thousand dollars ($1,000) per exclusively nonviolent violation, and five thousand dollars ($5,000) per any other violation, for each violation committed.

(b) The Attorney General, a district attorney, or a city attorney may bring a civil action to enjoin a violation of Section 423.2, for compensatory damages to persons aggrieved as described in subdivision (a) and for the assessment of a civil penalty against each respondent. The civil penalty shall not exceed two thousand dollars ($2,000) for an exclusively nonviolent first violation, and fifteen thousand dollars

($15,000) for any other first violation, and shall not exceed five thousand dollars ($5,000) for an exclusively nonviolent subsequent violation, and twenty-five thousand dollars ($25,000) for any other subsequent violation. In imposing civil penalties pursuant to this subdivision, the court shall consider a prior violation of the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248), or a prior violation of a statute of another jurisdiction that would constitute a violation of Section 423.2 or the federal Freedom of Access to Clinic Entrances Act of 1994, to be a prior violation of Section 423.2.

(c) No person shall be found liable under this section for conduct in violation of Section 423.2 done on a particular occasion where the identical conduct on that occasion was the basis for a finding of liability by that person under the federal Freedom of Access to Clinic Entrances Act of 1994 (18 U.S.C. Sec. 248).

423.5. (a) (1) The court in which a criminal or civil proceeding is filed for a violation of subdivision (a), (c), or (e) of Section 423.2 shall take all action reasonably required, including granting restraining orders, to safeguard the health, safety, or privacy of either of the following:

(A) A reproductive health services client, provider, or assistant who is a party or witness in the proceeding.

(B) A person who is a victim of, or at risk of becoming a victim of, conduct prohibited by subdivision (a), (c), or (e) of Section 423.2.

(2) The court in which a criminal or civil proceeding is filed for a violation of subdivision (b), (d), or (f) of Section 423.2 shall take all action reasonably required, including granting restraining orders, to safeguard the health, safety, or privacy of either of the following:

(A) A person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship.

(B) An entity that owns or operates a place of religious worship.

(b) Restraining orders issued pursuant to paragraph (1) of subdivision (a) may include provisions prohibiting or restricting the photographing of persons described in subparagraphs (A) and (B) of paragraph (1) of subdivision (a) when reasonably required to safeguard the health, safety, or privacy of those persons. Restraining orders issued pursuant to paragraph (2) of subdivision (a) may include provisions prohibiting or restricting the photographing of persons described in subparagraphs (A) and (B) of paragraph (2) of subdivision (a) when reasonably required to safeguard the health, safety, or privacy of those persons.

(c) A court may, in its discretion, permit an individual described in subparagraph (A) or (B) of paragraph (1) of subdivision (a) to use a pseudonym in a civil proceeding described in paragraph (1) of subdivision (a) when reasonably required to safeguard the health, safety, or privacy of those persons. A court may, in its discretion, permit an

individual described in subparagraph (A) or (B) of paragraph (2) of subdivision (a) to use a pseudonym in a civil proceeding described in paragraph (2) of subdivision (a) when reasonably required to safeguard the health, safety, or privacy of those persons.

423.6. This title shall not be construed for any of the following purposes:

(a) To impair any constitutionally protected activity, or any activity protected by the laws of California or of the United States of America.

(b) To provide exclusive civil or criminal remedies or to preempt or to preclude any county, city, or city and county from passing any law to provide a remedy for the commission of any of the acts prohibited by this title or to make any of those acts a crime.

(c) To interfere with the enforcement of any federal, state, or local laws regulating the performance of abortions or the provision of other reproductive health services.

(d) To negate, supercede, or otherwise interfere with the operation of any provision of Chapter 10 (commencing with Section 1138) of Part 3 of Division 2 of the Labor Code.

(e) To create additional civil or criminal remedies or to limit any existing civil or criminal remedies to redress an activity that interferes with the exercise of any other rights protected by the First Amendment to the United States Constitution or of Article I of the California Constitution.

(f) To preclude prosecution under both this title and any other provision of law, except as provided in subdivision (g) of Section 423.3.

SEC. 3. Title 5.7 (commencing with Section 13775) is added to Part 4 of the Penal Code, to read:

## TITLE 5.7. REPRODUCTIVE RIGHTS LAW ENFORCEMENT ACT

13775. This title shall be known and may be cited as the Reproductive Rights Law Enforcement Act.

13776. The following definitions apply for the purposes of this title:

(a) ''Anti-reproductive-rights crime'' means a crime committed partly or wholly because the victim is a reproductive health services client, provider, or assistant, or a crime that is partly or wholly intended to intimidate the victim, any other person or entity, or any class of persons or entities from becoming or remaining a reproductive health services client, provider, or assistant. ''Anti-reproductive-rights crime'' includes, but is not limited to, a violation of subdivision (a) or (c) of Section 423.2.

(b) ''Subject matter experts'' includes, but is not limited to, law enforcement agencies experienced with anti-reproductive-rights crimes,

and organizations such as the American Civil Liberties Union, the American College of Obstetricians and Gynecologists, the California Abortion and Reproductive Rights Action League, the California Medical Association, the Feminist Majority Foundation, the National Abortion Federation, the National Organization for Women, and the Planned Parenthood Federation of America that represent reproductive health services clients, providers, and assistants.

(c) ''Crime of violence,'' ''nonviolent,'' ''reproductive health services;'' ''reproductive health services client, provider, or assistant;'' and ''reproductive health services facility'' each has the same meaning as set forth in Section 423.1.

13777. (a) Except as provided in subdivision (d), the Attorney General shall do each of the following:

(1) Collect and analyze information relating to anti-reproductive-rights crimes, including, but not limited to, the threatened commission of these crimes and persons suspected of committing these crimes or making these threats. The analysis shall distinguish between crimes of violence, including, but not limited to, violations of subdivisions (a) and (e) of Section 423.2, and nonviolent crimes, including, but not limited to, violations of subdivision (c) of Section 423.2. The Attorney General shall make this information available to federal, state, and local law enforcement agencies and prosecutors in California.

(2) Direct local law enforcement agencies to report to the Department of Justice, in a manner that the Attorney General prescribes, any information that may be required relative to anti-reproductive-rights crimes. The report of each crime that violates Section 423.2 shall note the subdivision that prohibits the crime. The report of each crime that violates any other law shall note the code, section, and subdivision that prohibits the crime. The report of any crime that violates both Section 423.2 and any other law shall note both the subdivision of Section 423.2 and the other code, section, and subdivision that prohibits the crime.

(3) On or before July 1, 2003, and every July 1 thereafter, submit a report to the Legislature analyzing the information it obtains pursuant to this section.

(4) (A) Develop a plan to prevent, apprehend, prosecute, and report anti-reproductive-rights crimes, and to carry out the legislative intent expressed in subdivisions (c), (d), (e), and (f) of Section 1 of the act that enacts this title in the 2001-2002 session of the Legislature.

(B) Make a report on the plan to the Legislature by December 1, 2002. The report shall include recommendations for any legislation necessary to carry out the plan.

(5) Make a report to the Legislature in 2005, that evaluates the implementation of the act that enacts this title in the 2001–02 Regular

Session, any legislation recommended pursuant to subparagraph (B) of paragraph (4), and the plan developed pursuant to subparagraph (A) of paragraph (4). The report shall also include a recommendation concerning whether the Legislature should extend or repeal the sunset date in Section 13779 and recommendations regarding any other necessary legislation.

(b) In carrying out his or her responsibilities under this section, the Attorney General shall consult the Governor, the Commission on Peace Officer Standards and Training, and other subject matter experts.

(c) To avoid production and distribution costs, the Attorney General may submit the reports that this section requires electronically or as part of any other reports that he or she submits to the Legislature, and shall post the reports that this section requires on the Department of Justice Web site.

(d) The Attorney General shall implement this section to the extent the Legislature appropriates funds in the Budget Act or another statute for this purpose.

13778. (a) The Commission on Peace Officer Standards and Training, utilizing available resources, shall develop a two-hour telecourse on anti-reproductive-rights crimes and make the telecourse available to all California law enforcement agencies as soon as practicable after chaptering of the act that enacts this title in the 2001–2002 session of the Legislature.

(b) Persons and organizations, including, but not limited to, subject-matter experts, may make application to the commission, as outlined in Article 3 (commencing with Section 1051) of Division 2 of Title 11 of the California Code of Regulations, for certification of a course designed to train law enforcement officers to carry out the legislative intent expressed in paragraph (1) of subdivision (d) of Section 1 of the act that enacts this title in the 2001–02 Regular Session.

(c) In developing the telecourse required by subdivision (a), and in considering any applications pursuant to subdivision (b), the commission, utilizing available resources, shall consult the Attorney General and other subject matter experts, except where a subject matter expert has submitted, or has an interest in, an application pursuant to subdivision (b).

13779. This title shall remain in effect until January 1, 2007, and as of that date is repealed unless a later enacted statute 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.

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## CHAPTER 900

An act to amend Section 4052 of the Business and Professions Code, relating to pharmacy.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 4052 of the Business and Professions Code is amended to read:

4052. (a) Notwithstanding any other provision of law, a pharmacist may:

(1) Furnish a reasonable quantity of compounded medication to a prescriber for office use by the prescriber.

(2) Transmit a valid prescription to another pharmacist.

(3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Perform the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy-related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

(5) (A) Perform the following procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is a physician oversight, a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, or a physician, in accordance, as applicable, with policies, procedures, or protocols of that facility, the home health agency, the licensed clinic, the health care service plan, or that physician, in accordance with subparagraph (C):

(i) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(ii) Ordering drug therapy-related laboratory tests.

(iii) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(iv) Adjusting the drug regimen of a patient pursuant to a specific written order or authorization made by the patient's prescriber for the individual patient, and in accordance with the policies, procedures, or protocols of the health care facility, home health agency, licensed clinic, health care service plan, or physician. Adjusting the drug regimen does not include substituting or selecting a different drug, except as authorized by Section 4073.

(B) A patient's prescriber may prohibit, by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist.

(C) The policies, procedures, or protocols referred to in this paragraph shall be developed by health care professionals, including physicians, pharmacists, and registered nurses, and, at a minimum, meet all of the following requirements:

(i) Require that the pharmacist function as part of a multidisciplinary group that includes physicians and direct care registered nurses. The multidisciplinary group shall determine the appropriate participation of the pharmacist and the direct care registered nurse.

(ii) Require that the medical records of the patient be available to both the patient's prescriber and the pharmacist.

(iii) Require that the procedures to be performed by the pharmacist relate to a condition for which the patient has first been seen by a physician.

(iv) Except for procedures or functions provided by a health care facility, a licensed clinic in which there is physician oversight, or a

provider who contracts with a licensed health care plan with regard to the care or services provided to the enrollees of that health care service plan, require the procedures to be performed in accordance with a written, patient-specific protocol approved by the treating or supervising physician. Any change, adjustment, or modification of an approved preexisting treatment or drug therapy shall be provided in writing to the treating or supervising physician within 24 hours.

(6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices or furnish instructions to the patient or the patient's representative concerning the use of those devices.

(7) Provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals.

(8) Initiate emergency contraception drug therapy in accordance with standardized procedures or protocols developed by the pharmacist and an authorized prescriber who is acting within his or her scope of practice. Prior to performing any procedure authorized under this paragraph, a pharmacist shall have completed a training program on emergency contraception, delivered by an American Council on Pharmaceutical Education provider or another training program approved by the board. The training program shall include, but is not limited to, conduct of sensitive communications, quality assurance, referral to additional services, and documentation.

(b) (1) Prior to performing any procedure authorized by paragraph (4) of subdivision (a), a pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility.

(2) Prior to performing any procedure authorized by paragraph (5) of subdivision (a), a pharmacist shall have either (1) successfully completed clinical residency training or (2) demonstrated clinical experience in direct patient care delivery.

(3) For each emergency contraception drug therapy initiated pursuant to paragraph (8) of subdivision (a), the pharmacist shall provide the recipient of the emergency contraception drugs with a standardized fact sheet that includes, but is not limited to, the indications for use of the drug, the appropriate method for using the drug, the need for medical followup, and other appropriate information. The board shall develop this form in consultation with the State Department of Health Services, the American College of Obstetricians and Gynecologists, the California Pharmacists Association, and other health care organizations. The provisions of this section do not preclude the use of existing publications developed by nationally recognized medical organizations.

(c) Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

(d) Nothing in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

SEC. 2. Section 4052 of the Business and Professions Code is amended to read:

4052. (a) Notwithstanding any other provision of law, a pharmacist may:

(1) Furnish a reasonable quantity of compounded medication to a prescriber for office use by the prescriber.

(2) Transmit a valid prescription to another pharmacist.

(3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Perform the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy-related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

(5) (A) Perform the following procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is a physician oversight, a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, or a physician, in accordance, as applicable, with policies, procedures, or protocols of that facility, the home health agency, the licensed clinic, the health care service plan, or that physician, in accordance with subparagraph (C):

(i) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(ii) Ordering drug therapy-related laboratory tests.

(iii) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(iv) Initiating or adjusting the drug regimen of a patient pursuant to a specific written order or authorization made by the patient's prescriber

for the individual patient, and in accordance with the policies, procedures, or protocols of the health care facility, home health agency, licensed clinic, health care service plan, or physician. Adjusting the drug regimen does not include substituting or selecting a different drug, except as authorized by the protocol. The pharmacist shall provide written notification to the patient's prescriber, or enter the appropriate information in an electronic patient record system shared by the prescriber, of any drug regimen initiated pursuant to this clause within 24 hours.

(B) A patient's prescriber may prohibit, by written instruction, any adjustment or change in the patient's drug regimen by the pharmacist.

(C) The policies, procedures, or protocols referred to in this paragraph shall be developed by health care professionals, including physicians, pharmacists, and registered nurses, and, at a minimum, meet all of the following requirements:

(i) Require that the pharmacist function as part of a multidisciplinary group that includes physicians and direct care registered nurses. The multidisciplinary group shall determine the appropriate participation of the pharmacist and the direct care registered nurse.

(ii) Require that the medical records of the patient be available to both the patient's prescriber and the pharmacist.

(iii) Require that the procedures to be performed by the pharmacist relate to a condition for which the patient has first been seen by a physician.

(iv) Except for procedures or functions provided by a health care facility, a licensed clinic in which there is physician oversight, or a provider who contracts with a licensed health care plan with regard to the care or services provided to the enrollees of that health care service plan, require the procedures to be performed in accordance with a written, patient-specific protocol approved by the treating or supervising physician. Any change, adjustment, or modification of an approved preexisting treatment or drug therapy shall be provided in writing to the treating or supervising physician within 24 hours.

(6) Manufacture, measure, fit to the patient, or sell and repair dangerous devices or furnish instructions to the patient or the patient's representative concerning the use of those devices.

(7) Provide consultation to patients and professional information, including clinical or pharmacological information, advice, or consultation to other health care professionals.

(8) Initiate emergency contraception drug therapy in accordance with standardized procedures or protocols developed by the pharmacist and an authorized prescriber who is acting within his or her scope of practice. Prior to performing any procedure authorized under this paragraph, a pharmacist shall have completed a training program on emergency

contraception, which includes, but is not limited to, conduct of sensitive communications, quality assurance, referral to additional services, and documentation.

(b) (1) Prior to performing any procedure authorized by paragraph (4) of subdivision (a), a pharmacist shall have received appropriate training as prescribed in the policies and procedures of the licensed health care facility.

(2) Prior to performing any procedure authorized by paragraph (5) of subdivision (a), a pharmacist shall have either (1) successfully completed clinical residency training or (2) demonstrated clinical experience in direct patient care delivery.

(3) For each emergency contraception drug therapy initiated pursuant to paragraph (8) of subdivision (a), the pharmacist shall provide the recipient of the emergency contraception drugs with a standardized fact sheet that includes, but is not limited to, the indications for use of the drug, the appropriate method for using the drug, the need for medical followup, and other appropriate information. The board shall develop this form in consultation with the State Department of Health Services, the American College of Obstetricians and Gynecologists, the California Pharmacists Association, and other health care organizations. The provisions of this section do not preclude the use of existing publications developed by nationally recognized medical organizations.

(c) Nothing in this section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

(d) Nothing in this section shall affect the requirements of existing law relating to the licensing of a health care facility.

SEC. 3. Section 2 of this bill incorporates amendments to Section 4052 of the Business and Professions Code proposed by both this bill and AB 826. 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 4052 of the Business and Professions Code, and (3) this bill is enacted after AB 826, 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 901

An act to amend Section 84101 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 84101 of the Government Code is amended to read:

84101. (a) A committee that is a committee by virtue of subdivision (a) of Section 82013 shall file with the Secretary of State a statement of organization within 10 days after it has qualified as a committee. The committee shall file the original of the statement of organization with the Secretary of State and shall also file a copy of the statement of organization with the local filing officer, if any, with whom the committee is required to file the originals of its campaign reports pursuant to Section 84215. The original and copy of the statement of organization shall be filed within 10 days after the committee has qualified as a committee. The Secretary of State shall assign a number to each committee that files a statement of organization and shall notify the committee of the number. The Secretary of State shall send a copy of statements filed pursuant to this section to the clerk of each county which he or she deems appropriate. A county clerk who receives a copy of a statement of organization from the Secretary of State pursuant to this section shall send a copy of the statement to the clerk of each city in the county that he or she deems appropriate.

(b) In addition to filing the statement of organization as required by subdivision (a), if a committee qualifies as a committee under subdivision (a) of Section 82013 before the date of an election in connection with which the committee is required to file preelection statements, but after the closing date of the last campaign statement required to be filed before the election pursuant to Section 84200.7 or 84200.8, the committee shall file, by telegram or personal delivery within 24 hours of qualifying as a committee, the information required to be reported in the statement of organization. The information required by this subdivision shall be filed with the filing officer with whom the committee is required to file the originals of its campaign reports pursuant to Section 84215.

(c) If an independent expenditure committee qualifies as a committee pursuant to subdivision (a) of Section 82013 during the time period described in Section 82036.5 and makes independent expenditures of one thousand dollars ($1,000) or more to support or oppose a candidate

or candidates for office, the committee shall file by facsimile transmission, online transmission, telegram or personal delivery within 24 hours of qualifying as a committee, the information required to be reported in the statement of organization. The information required by this section shall be filed with the filing officer with whom the committee is required to file the original of its campaign reports pursuant to Section 84215, and to file at all locations required for the candidate or candidates supported or opposed by the independent expenditures. The filings required by this section are in addition to filings that may be required by Sections 84203.5 and 84204.

(d) For purposes of this section, in calculating whether one thousand dollars ($1,000) in contributions has been received, payments for a filing fee or for a statement of qualifications to appear in a sample ballot shall not be included if these payments have been made from the candidate's personal funds.

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. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

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## CHAPTER 902

An act to add Article 3 (commencing with Section 19230) to Chapter 3 of Division 19 of the Elections Code, relating to the financing of a program to modernize voting equipment by providing funds necessary therefor through the issuance and sale of bonds of the State of California and by providing for the handling and disposition of those funds, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Article 3 (commencing with Section 19230) is added to Chapter 3 of Division 19 of the Elections Code, to read:

## Article 3. Voting Modernization Bond Act of 2002 (Shelley-Hertzberg Act)

19230. This article shall be known and may be cited as the Voting Modernization Bond Act of 2002 (Shelley-Hertzberg Act).

19231. The State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), except as otherwise provided herein, is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued by this article, and the provisions of that law are included in this article as though set out in full.

19232. As used in this article, the following words have the following meanings:

(a) ''Board'' means the Voting Modernization Board, established pursuant to Section 19235.

(b) ''Bond'' means a state general obligation bond issued pursuant to this article adopting the provisions of the State General Obligation Bond Law.

(c) ''Bond act'' means this article authorizing the issuance of state general obligation bonds and adopting the State General Obligation Bond Law by reference.

(d) ''Committee'' means the Voting Modernization Finance Committee, established pursuant to Section 19233.

(e) ''Fund'' means the Voting Modernization Fund, created pursuant to subdivision (b) of Section 19234.

(f) ''Voting system'' means any voting machine, voting device, or vote-tabulating device that does not utilize prescored punch card ballots.

19233. (a) The Voting Modernization Finance Committee is hereby established for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds authorized by this article.

(b) The committee consists of the Controller, the Director of Finance, and the Treasurer, or their designated representatives, all of whom shall serve thereon without compensation, and a majority of whom shall constitute a quorum. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(c) For purposes of this article, the Voting Modernization Finance Committee is ''the committee'' as that term is used in the State General Obligation Bond Law.

19234. (a) The committee may create a debt or debts, liability or liabilities, of the State of California, in the aggregate amount of not more than two hundred million dollars ($200,000,000), exclusive of refunding bonds, in the manner provided herein for the purpose of

creating a fund to assist counties in the purchase of updated voting systems.

(b) The proceeds of bonds issued and sold pursuant to this article shall be deposited in the Voting Modernization Fund, which is hereby established.

(c) A county is eligible to apply to the board for fund money if it meets all of the following requirements:

(1) The county has purchased a new voting system after January 1, 1999, and is continuing to make payments on that system on the date that this article becomes effective.

(2) The county matches fund moneys at a ratio of one dollar ($1) of county moneys for every three dollars ($3) of fund moneys.

(3) The county has not previously requested fund money for the purchase of a new voting system. Applications for expansion of an existing system or components related to a previously approved application shall be accepted.

(d) Fund moneys shall only be used to purchase systems certified by the Secretary of State, pursuant to Division 19 (commencing with Section 19001), and in no event shall fund moneys be used to purchase a voting system that utilizes prescored punch card ballots.

(e) Any voting system purchased using bond funds that does not require a voter to directly mark on the ballot must produce, at the time the voter votes his or her ballot or at the time the polls are closed, a paper version or representation of the voted ballot or of all the ballots cast on a unit of the voting system. The paper version shall not be provided to the voter but shall be retained by elections officials for use during the 1 percent manual recount or other recount or contest.

19234.5. The Legislature may amend subdivisions (c) and (d) of Section 19234 and Section 19235 by a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this article.

19235. The Voting Modernization Board is hereby established and designated the ''board'' for purposes of the State General Obligation Bond Law, and for purposes of administering the Voting Modernization Fund. The board consists of five members, three selected by the Governor, and two selected by the Secretary of State. The board shall have the authority to reject any application for fund money it deems inappropriate, excessive, or that does not comply with the intent of this article. A county whose application is rejected shall be allowed to submit an amended application.

19236. (a) All bonds authorized by this article, when duly sold and delivered as provided herein, constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the

State of California is hereby pledged for the punctual payment of both principal and interest thereof. The bonds issued pursuant to this article shall be repaid within 10 years from the date they are issued.

(b) There shall be collected annually, in the same manner and at the same time as other state revenue is collected, a sum of money, in addition to the ordinary revenues of the state, sufficient to pay the principal of, and interest on, these bonds as provided herein. All officers required by law to perform any duty in regard to the collection of state revenues shall collect this additional sum.

(c) On the dates on which funds are remitted pursuant to Section 16676 of the Government Code for the payment of the then maturing principal of, and interest on, the bonds in each fiscal year, there shall be returned to the General Fund all of the money in the fund, not in excess of the principal of, and interest on, any bonds then due and payable. If the money so returned on the remittance dates is less than the principal and interest then due and payable, the balance remaining unpaid shall be returned to the General Fund out of the fund as soon as it shall become available, together with interest thereon from the dates of maturity until returned, at the same rate of interest as borne by the bonds, compounded semiannually. This subdivision does not grant any lien on the fund or the moneys therein to holders of any bonds issued under this article. However, this subdivision shall not apply in the case of any debt service that is payable from the proceeds of any refunding bonds. For the purposes of this subdivision, ''debt service'' means the principal (whether due at maturity, by redemption, or acceleration), premium, if any, or interest payable on any date to any series of bonds.

19237. Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated from the General Fund, for purposes of this article, a sum of money that will equal both of the following:

(a) That sum annually necessary to pay the principal of, and the interest on, the bonds issued and sold as provided herein, as that principal and interest become due and payable.

(b) That sum necessary to carry out Section 19238, appropriated without regard to fiscal years.

19238. For the purposes of this article, the Director of Finance may, by executive order, authorize the withdrawal from the General Fund of a sum of money not to exceed the amount of the unsold bonds that have been authorized by the committee to be sold pursuant to this article. Any sums withdrawn shall be deposited in the fund. All moneys made available under this section to the board shall be returned by the board to the General Fund, plus the interest that the amounts would have earned in the Pooled Money Investment Account, from the sale of bonds for the purpose of carrying out this article.

19239. The board may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account, in accordance with Section 16312 of the Government Code, for the purposes of carrying out this article. The amount of the request shall not exceed the amount of unsold bonds which the committee has, by resolution, authorized to be sold for the purpose of carrying out this article. The board shall execute whatever documents are required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the board in accordance with this article.

19240. Upon request of the board, supported by a statement of its plans and projects approved by the Governor, the committee shall determine whether to issue any bonds authorized under this article in order to carry out the board's plans and projects, and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out these plans and projects progressively, and it is not necessary that all of the bonds be issued or sold at any one time.

19241. (a) The committee may authorize the Treasurer to sell all or any part of the bonds authorized by this article at the time or times established by the Treasurer.

(b) Whenever the committee deems it necessary for an effective sale of the bonds, the committee may authorize the Treasurer to sell any issue of bonds at less than their par value, notwithstanding Section 16754 of the Government Code. However, the discount on the bonds shall not exceed 3 percent of the par value thereof.

19242. Out of the first money realized from the sale of bonds as provided herein, there shall be redeposited in the General Obligation Bond Expense Revolving Fund, established by Section 16724.5 of the Government Code, the amount of all expenditures made for the purposes specified in that section, and this money may be used for the same purpose and repaid in the same manner whenever additional bond sales are made.

19243. Any bonds issued and sold pursuant to this article may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 2 of Title 2 of the Government Code. The approval of the voters for the issuance of bonds under this article includes approval for the issuance of bonds issued to refund bonds originally issued or any previously issued refunding bonds.

19244. Notwithstanding any provision of the bond act, if the Treasurer sells bonds under this article for which bond counsel has issued an opinion to the effect that the interest on the bonds is excludable from gross income for purposes of federal income tax, subject to any conditions which may be designated, the Treasurer may establish

separate accounts for the investment of bond proceeds and for the earnings on those proceeds, and may use those proceeds or earnings to pay any rebate, penalty, or other payment required by federal law or take any other action with respect to the investment and use of bond proceeds required or permitted under federal law necessary to maintain the tax-exempt status of the bonds or to obtain any other advantage under federal law on behalf of the funds of this state.

19245. The Legislature hereby finds and declares that, inasmuch as the proceeds from the sale of bonds authorized by this article are not ''proceeds of taxes'' as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by Article XIII B.

SEC. 2. Section 1 of this act shall take effect upon the approval by the people of the Voting Modernization Bond Act of 2002 (Shelley-Hertzberg Act), submitted to the voters pursuant to Section 3 of this act.

SEC. 3. (a) A ballot measure that sets forth the Voting Modernization Bond Act of 2002 (Shelley-Hertzberg Act), as set forth in Section 1 of this act, shall be submitted to the voters at the March 5, 2002, statewide election.

(b) Notwithstanding any other provision of law, with respect to the Voting Modernization Bond Act of 2002 (Shelley-Hertzberg Act), all ballots of the March 5, 2002, statewide primary election shall have printed thereon and in a square thereof, exclusively the words: '' Voting Modernization Bond Act of 2002 (Shelley-Hertzberg Act)'' and in the same square under those words, the following in 8-point type: ''This act is to ensure that every person's vote is accurately counted. It authorizes the issuance of state bonds allowing counties to purchase modern voting equipment and replace outdated punch card (chad) systems. This act provides for bonds in the amount of two hundred million dollars ($200,000,000) and appropriates money from the General Fund to pay off bonds.'' Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

(c) Notwithstanding Sections 13247 and 13281 of the Elections Code, the language in subdivision (a) shall be the only language included in the ballot label for the condensed statement of the ballot title, and the Attorney General shall not supplement, subtract from, or revise that language, except that the Attorney General may include the financial impact summary prepared pursuant to Section 9087 of the Elections Code and Section 88003 of the Government Code. The ballot label is the condensed statement of the ballot title and the financial impact summary.

(d) Where the voting in the election is done by means of voting machines used pursuant to law in a manner that carries out the intent of

this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

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

In order that the Voting Modernization Bond Act of 2002 (Shelley-Hertzberg Act) may be submitted for voter approval at the March 5, 2002, statewide primary election to provide counties urgently needed funding to purchase modern voting systems, it is necessary that this act take effect immediately.

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## CHAPTER 903

An act to amend, repeal, and add Sections 270, 275, 276 of, and to add and repeal Section 276.5 of, the Public Utilities Code, relating to public utilities.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 270 of the Public Utilities Code is amended to read:

270. (a) The following funds are hereby created in the State Treasury:

(1) The California High-Cost Fund-A Administrative Committee Fund.

(2) The California High-Cost Fund-B Administrative Committee Fund.

(3) The Universal Lifeline Telephone Service Trust Administrative Committee Fund.

(4) The Deaf and Disabled Telecommunications Program Administrative Committee Fund.

(5) The Payphone Service Providers Committee Fund.

(6) The California Teleconnect Fund Administrative Committee Fund.

(b) Moneys in the funds may only be expended pursuant to this chapter and upon appropriation in the annual Budget Act. Any appropriation from the California High-Cost Administrative Committee Fund-B for the purposes of the grant program established in Section 276.5 of the Public Utilities Code regarding rural telecommunications

infrastructure, may not be made until all of the following events have occurred:

(1) The United States Supreme Court has decided Iowa Utilities Board v. Federal Communications Commission (219 F.3d 744 (8th Cir.); certiorari granted January 22, 2001).

(2) The commission recalculates the statewide average cost to serve a residential line stated in Decision 96-10-066, as it determines to be appropriate.

(3) The commission is current on all claims made by carriers for service provided in high-cost areas, except for those claims that the commission is in the process of investigating, contesting, or disallowing.

(c) Moneys in each fund may not be appropriated, or in any other manner transferred or otherwise diverted, to any other fund or entity, except as provided for in Sections 276 and 276.5.

(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 270 is added to the Public Utilities Code, to read:

270. (a) The following funds are hereby created in the State Treasury:

(1) The California High-Cost Fund-A Administrative Committee Fund.

(2) The California High-Cost Fund-B Administrative Committee Fund.

(3) The Universal Lifeline Telephone Service Trust Administrative Committee Fund.

(4) The Deaf and Disabled Telecommunications Program Administrative Committee Fund.

(5) The Payphone Service Providers Committee Fund.

(6) The California Teleconnect Fund Administrative Committee Fund.

(b) Moneys in the funds may only be expended pursuant to this chapter and upon appropriation in the annual Budget Act.

(c) Moneys in each fund may not be appropriated, or in any other manner transferred or otherwise diverted, to any other fund or entity.

(d) This section shall become operative on January 1, 2006.

SEC. 3. Section 275 of the Public Utilities Code is amended to read:

275. (a) There is hereby created the California High-Cost Fund-A Administrative Committee, which is an advisory board to advise the commission regarding the development, implementation, and administration of a program to provide for transfer payments to small independent telephone corporations providing local exchange services in high-cost rural and small metropolitan areas in the state to create fair

and equitable local rate structures, as provided for in Section 739.3, the development of a grant program for the construction of telecommunications infrastructure as set forth in Section 276.5, and to carry out the program pursuant to the commission's direction, control, and approval.

(b) All revenues collected by telephone corporations in rates authorized by the commission to fund the program specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California High-Cost Fund-A Administrative Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund. Any unexpended revenues collected prior to the operative date of this section shall be submitted to the commission, and the commission shall transfer those moneys to the Controller for deposit in the California High-Cost Fund-A Administrative Committee Fund.

(c) Moneys appropriated from the California High-Cost Fund-A Administrative Committee Fund to the commission shall be utilized exclusively by the commission for the program specified in subdivision (a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.

(d) Telephone corporations receiving transfer payments for providing local exchange services in high-cost areas in the state under the program established to create fair and equitable local rate structures as provided for in Section 739.3 shall continue to be fully reimbursed for the costs they are entitled to recover pursuant to commission Decision 96-10-066.

(e) Any appropriation from the California High-Cost Fund-A Administrative Committee Fund for the purposes of the grant program established in Section 276.5 regarding rural telecommunications infrastructure, may not be made until the commission is current on all claims made by carriers for service provided in high-cost areas, except for those claims that the commission is in the process of investigating, contesting, or disallowing.

(f) 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. Section 275 is added to the Public Utilities Code, to read:

275. (a) There is hereby created the California High-Cost Fund-A Administrative Committee, which is an advisory board to advise the commission regarding the development, implementation, and administration of a program to provide for transfer payments to small independent telephone corporations providing local exchange services in high-cost rural and small metropolitan areas in the state to create fair and equitable local rate structures, as provided for in Section 739.3, and

to carry out the program pursuant to the commission's direction, control, and approval.

(b) All revenues collected by telephone corporations in rates authorized by the commission to fund the program specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California High-Cost Fund-A Administrative Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund. Any unexpended revenues collected prior to the operative date of this section shall be submitted to the commission, and the commission shall transfer those moneys to the Controller for deposit in the California High-Cost Fund-A Administrative Committee Fund.

(c) Moneys appropriated from the California High-Cost Fund-A Administrative Committee Fund to the commission shall be utilized exclusively by the commission for the program specified in subdivision (a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.

(d) This section shall become operative on January 1, 2006.

SEC. 5. Section 276 of the Public Utilities Code is amended to read:

276. (a) There is hereby created the California High-Cost Fund-B Administrative Committee, which is an advisory board to advise the commission regarding the development, implementation, and administration of a program to provide for transfer payments to telephone corporations providing local exchange services in high-cost areas in the state to create fair and equitable local rate structures, as provided for in Section 739.3, and the development of a grant program for the construction of telecommunications infrastructure as set forth in Section 276.5, and to carry out the program pursuant to the commission's direction, control, and approval.

(b) All revenues collected by telephone corporations in rates authorized by the commission to fund the program specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California High-Cost Fund-B Administrative Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund. Any unexpended revenues collected prior to the operative date of this section shall be submitted to the commission, and the commission shall transfer those moneys to the Controller for deposit in the California High-Cost Fund-B Administrative Committee Fund.

(c) Moneys appropriated from the California High-Cost Fund-B Administrative Committee Fund to the commission shall be utilized exclusively by the commission for the programs specified in subdivision

(a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.

(d) Telephone corporations receiving transfer payments for providing local exchange services in high cost areas in the state under the program established to create fair and equitable local rate structures as provided for in Section 739.3 shall continue to be fully reimbursed for the costs they are entitled to recover pursuant to commission Decision 96-10-066.

(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. 6. Section 276 is added to the Public Utilities Code, to read:

276. (a) There is hereby created the California High-Cost Fund-B Administrative Committee, which is an advisory board to advise the commission regarding the development, implementation, and administration of a program to provide for transfer payments to telephone corporations providing local exchange services in high-cost areas in the state to create fair and equitable local rate structures, as provided for in Section 739.3, and to carry out the program pursuant to the commission's direction, control, and approval.

(b) All revenues collected by telephone corporations in rates authorized by the commission to fund the program specified in subdivision (a) shall be submitted to the commission pursuant to a schedule established by the commission. The commission shall transfer the moneys received to the Controller for deposit in the California High-Cost Fund-B Administrative Committee Fund. All interest earned by moneys in the fund shall be deposited in the fund. Any unexpended revenues collected prior to the operative date of this section shall be submitted to the commission, and the commission shall transfer those moneys to the Controller for deposit in the California High-Cost Fund-B Administrative Committee Fund.

(c) Moneys appropriated from the California High-Cost Fund-B Administrative Committee Fund to the commission shall be utilized exclusively by the commission for the program specified in subdivision (a), including all costs of the board and the commission associated with the administration and oversight of the program and the fund.

(d) This section shall become operative on January 1, 2006.

SEC. 7. Section 276.5 is added to the Public Utilities Code, to read:

276.5. (a) The commission shall establish a grant program to aid in the establishment of telecommunications service in areas not currently served by existing local exchange carriers. The program shall be funded out of either the California High-Cost Administrative Committee Fund-A or the California High-Cost Administrative Committee Fund-B, or both, as determined by the commission, and the funding level may not exceed ten million dollars ($10,000,000) per year.

(b) On or after July 1, 2002, any community-based group representing a qualifying community may apply for and receive grants to build an original telecommunications infrastructure that can provide basic telecommunications service that will serve an area that meets the grant program's population criteria with consideration given to communities with schools, hospitals, and health clinics, as set forth in Decision 96-10-066, and that currently lacks basic telecommunications services, as described in Decision 96-10-066 of the commission. A community-based group representing a qualifying community may alternatively apply for and receive a grant to subsidize the cost of the telecommunications service itself, if the group determines that this would be more cost-effective than subsidizing the building of an original telecommunications infrastructure. On or before June 30, 2002, the commission, shall establish eligibility criteria for community-based groups to qualify to apply for telecommunications infrastructure grants. The criteria shall include a requirement that a local agency, as defined by Section 50001 of the Government Code, or a town, as defined by Section 21 of the Government Code, shall act as the community-based group's fiscal agent for the receipt and distribution of funds. Qualifying communities shall have a median household income no greater than the income level used in the Universal Lifeline Telephone Service index for a family of four. The commission shall require that the telecommunications carrier that provides the service has the obligation to serve the community.

(c) Grant proposals shall be submitted in accordance with procedures prescribed by the commission and evaluated and awarded by the commission using technology criteria developed by the government-industry working group established by subdivision (h). Grant proposals shall contain all of the following:

(1) A letter from a local agency or town agreeing to act as a fiscal agent for the receipt and distribution of funds.

(2) Preliminary engineering feasibility studies conducted in cooperation with the local service providers that include all of the following:

(A) Topographical maps indicating the location of all existing residences.

(B) Schematic maps of the proposed network facilities.

(C) Recommendations and justifications for the preferred technologies.

(D) Network compatibility statements from one or more interconnecting carriers.

(E) Cost projections for the infrastructure facilities.

(F) Cost projections for the interconnection and recurring service provisions.

(G) Projected budget for engineering feasibility studies.

(3) Recommendations and letters of support from all of the following:

(A) The county board of supervisors.

(B) Other affected local governments.

(C) Affected school districts.

(D) Affected emergency service providers.

(E) Affected law enforcement agencies.

(4) Letters of commitment from 75 percent of the unserved population.

(5) A project schedule, including timeline and budget.

(6) A management plan that assures the proper utilization of grant funds.

(7) Evidence that competing providers and competing technologies have been considered and evaluated.

(d) Grant applicants that are rejected by the commission may be reimbursed for the cost of their preliminary engineering feasibility studies, including, but not limited to, any approved cost of a local telecommunications carrier that contributes to the studies, from the grant program.

(e) The procedures developed for awarding grants shall ensure that the grants awarded do not exceed annual moneys available to support the program, that not more than one grant is awarded to a qualifying community, and that no one applicant receive more than 25 percent of the designated program funds in a single fiscal year.

(f) In evaluating grant applications, the commission shall consider the cost effectiveness of the application, the number of people served, the level of local support, the ability of the community served to pay for the services delivered, and the effect on public health and safety.

(g) The commission shall establish a government-industry working group to develop the technical criteria to be used in evaluating grant awards. The working group shall be composed of, but not limited to, the following:

(1) Representatives of the commission.

(2) Representatives of the incumbent local exchange carrier industry.

(3) Representatives of the competitive local exchange carrier industry.

(4) Representatives of the wireless carrier industry.

(h) Grant applicants shall seek to secure federal sources of funding in conjunction with local subsidies for the construction of telecommunications infrastructure.

(i) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute enacted before January 1, 2006, deletes or extends that date.

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.

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## CHAPTER 904

An act to amend, repeal, and add Sections 12223, 12241, 12261, and 12304 of the Elections Code, relating to election precincts.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. It is the intent of the Legislature to do all of the following:

(a) Increase precinct size insofar as it facilitates a decrease in the number of polling places in private residences that are not easily accessible to the disabled or elderly.

(b) Increase the consistency of polling place locations.

(c) Increase the number of poll workers who continue to serve on precinct boards over the course of elections.

SEC. 2. Section 12223 of the Elections Code is amended to read:

12223. (a) Whenever any jurisdiction is divided into election precincts or whenever the boundaries of established precincts are changed or new precincts created, the precinct boundaries shall be fixed in a manner so that the number of voters in each precinct does not exceed 1,000 in counties with a population of less than 1,000,000, and does not exceed 1,250 in all other counties, on the 88th day prior to the day of election, unless otherwise provided by law.

(b) Before establishing an election precinct in which the number of voters exceeds 1,000, the elections official shall provide to the Secretary of State and to the public written information which addresses all of the following:

(1) Absentee voting patterns of the registered voters in the proposed precinct areas.

(2) Voter turnout rates at polling places in the precinct areas.

(3) The consistency of the location of the polling place, from one statewide election to the next.

(4) Proposed staffing levels at the precinct and training to be provided to poll workers.

(5) Compliance with the federal Voting and Accessibility for the Elderly and Handicapped Act of 1984 (42 U.S.C. Sec. 1973ee) and Section 12280 of this code.

(c) A county that increases any election precinct to more than 1,000 voters shall report that action to the Secretary of State and shall provide any information required by the Secretary of State to determine the impact of that increase. The Secretary of State shall report to the Legislature by January 1, 2004, on the impact of election precincts in excess of 1,000 voters. The report shall include recommendations about whether or not future legislative action is necessary.

(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. 3. Section 12223 is added to the Elections Code, to read:

12223. (a) Whenever a jurisdiction is divided into election precincts or whenever the boundary of an established precinct is changed or a new precinct is created, the precinct boundary shall be fixed in a manner so that the number of voters in the precinct does not exceed 1,000 on the 88th day prior to the day of election, unless otherwise provided by law.

(b) This section shall become operative on January 1, 2005.

SEC. 4. Section 12241 of the Elections Code is amended to read:

12241. (a) The elections official conducting local or consolidated elections, or statewide elections other than the direct primary, presidential primary, or general election, may, for the purpose of the election, divide the territory within which the election is to be held into consolidated election precincts by consolidating existing precincts, or otherwise, subject to Section 12222, and may change and alter the precincts for those elections as often as occasion requires. Not more than six existing precincts may be consolidated into one consolidated election precinct. The polling place used for a consolidated precinct shall be located within the boundaries of the consolidated precinct.

(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 12241 is added to the Elections Code, to read:

12241. (a) The elections official conducting local, special, or consolidated elections, or statewide elections other than the direct primary, presidential primary, or general election, for the purpose of the election, may divide the territory within which the election is to be held

into special election or consolidated election precincts by consolidating existing precincts, or otherwise, subject to Section 12222, and may change and alter the precincts for those elections as often as occasion requires. Not more than six existing precincts may be consolidated into one special election or consolidated election precinct. The polling place used for a consolidated precinct shall be located within the boundaries of the consolidated precinct.

(b) This section shall become operative on January 1, 2005.

SEC. 6. Section 12261 of the Elections Code is amended to read:

12261. (a) The boundaries of precincts for the general election shall be the same as those established for the direct primary election, except to the extent necessary to add or subtract precincts as the result of population change or to divide precincts containing more than 1,000 voters in counties with a population of less than 1,000,000, or more than 1,250 in all other counties, or to change precinct boundaries due to jurisdictional boundary changes, or consolidations of elections. Changes of precinct boundaries may also be made when consolidating precincts.

(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. 7. Section 12261 is added to the Elections Code, to read:

12261. (a) The boundaries of precincts for the general election shall be the same as those established for the direct primary election, except to the extent necessary to add or subtract precincts as the result of population change or to divide precincts containing more than 1,000 voters or to change precinct boundaries due to jurisdictional boundary changes, or consolidations of elections. Changes of precinct boundaries may also be made when consolidating precincts.

(b) This section shall become operative on January 1, 2005.

SEC. 8. Section 12304 of the Elections Code is amended to read:

12304. (a) The composition of the precinct board shall be determined by the elections official based on election precinct size. The precinct board shall consist of a minimum of one inspector and two clerks. If the elections official opts to increase precinct size pursuant to subdivision (b) of Section 12223, the precinct board shall consist of a minimum of one inspector and three clerks. Additional clerk positions may be allocated in proportion to the number of registered voters within the precinct.

(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. 9. Section 12304 is added to the Elections Code, to read:

12304. (a) The composition of the precinct board shall be determined by the elections official based on election precinct size. The precinct board shall consist of a minimum of one inspector and two clerks. Additional clerk positions may be allocated in proportion to the number of registered voters within the precinct.

(b) This section shall become operative on January 1, 2005.

SEC. 10. Pursuant to Section 17579 of the Government Code, the Legislature finds that there is no mandate contained in this act that will result in costs incurred by a local agency or school district for a new program or higher level of service which require reimbursement pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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## CHAPTER 905

An act to add Sections 25402.6 and 25402.7 to the Public Resources Code, relating to energy resources.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 25402.6 is added to the Public Resources Code, to read:

25402.6. The commission shall investigate options and develop a plan to decrease wasteful peakload energy consumption in existing residential and nonresidential buildings. On or before January 1, 2004, the commission shall report its findings to the Legislature, including, but not limited to, any changes in law necessary to implement the plan to decrease wasteful peakload energy consumption in existing residential and nonresidential buildings.

SEC. 2. Section 25402.7 is added to the Public Resources Code, to read:

25402.7. (a) In consultation with the commission, electric and gas utilities shall provide support for building standards and other regulations pursuant to Section 25402 and subdivision (b) of Section 25553 including appropriate research, development, and training to implement those standards and other regulations.

(b) The electric and gas utilities shall provide support pursuant to subdivision (a) only to the extent that funds are made available to the utilities for that purpose.

SEC. 3. The State Energy Resources Conservation and Development Commission shall investigate options, develop a plan, and report to the Legislature pursuant to Section 25402.6 of the Public Resources Code, using funds in existence on the effective date of the act adding Section 25402.6 to the Public Resources Code.

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## CHAPTER 906

An act to amend Sections 296, 299.5, and 299.6 of the Penal Code, relating to forensic identification.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 296 of the Penal Code is amended to read:

296. (a) (1) Any person who is convicted of any of the following crimes, or is found not guilty by reason of insanity of any of the following crimes, shall, regardless of sentence imposed or disposition rendered, be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand for law enforcement identification analysis:

(A) Any offense or attempt to commit any felony offense described in Section 290, or any felony offense that imposes upon a person the duty to register in California as a sex offender under Section 290.

(B) Murder in violation of Section 187, 190, 190.05, or any degree of murder as set forth in Chapter 1 (commencing with Section 187) of Title 8 of Part 1 of the Penal Code, or any attempt to commit murder.

(C) Voluntary manslaughter in violation of Section 192 or an attempt to commit voluntary manslaughter.

(D) Felony spousal abuse in violation of Section 273.5.

(E) Aggravated sexual assault of a child in violation of Section 269.

(F) A felony offense of assault or battery in violation of Section 217.1, 220, 241.1, 243, 243.1, 243.3, 243.4, 243.7, 244, 245, 245.2, 245.3, or 245.5.

(G) Kidnapping in violation of subdivisions (a) to (e), inclusive, of Section 207, or Section 208, 209, 209.5, or 210, or an attempt to commit any of these offenses.

(H) Mayhem in violation of Section 203 or aggravated mayhem in violation of Section 205, or an attempt to commit either of these offenses.

(I) Torture in violation of Section 206 or an attempt to commit torture.

(J) Burglary as defined in subdivision (a) of Section 460 or an attempt to commit this offense.

(K) Robbery as defined in subdivision (a) or (b) of Section 212.5 or an attempt to commit either of these offenses.

(L) Arson in violation of subdivision (a) or (b) of Section 451 or an attempt to commit either of these offenses.

(M) Carjacking in violation of Section 215 or an attempt to commit this offense.

(2) Any person who is required to register under Section 290 because of the commission of, or the attempt to commit, a felony offense specified in Section 290, and who is committed to any institution under the jurisdiction of the Department of the Youth Authority where he or she was confined, or is granted probation, or is or was committed to a state hospital 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 be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand to that institution or, in the case of a person granted probation, to a person and at a location within the county designated for testing.

(b) The provisions of this chapter and its requirements for submission to testing as soon as administratively practicable to provide specimens, samples, and print impressions as described in subdivision (a) shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility, and shall include, but not be limited to, the following persons, including juveniles:

(1) Any person committed to a state hospital or other treatment facility 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.

(2) Any person who has a severe mental disorder as set forth within the provisions of Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

(3) Any person found to be 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.

(c) The provisions of this chapter are mandatory and apply whether or not the court advises a person, including any juvenile, that he or she must provide the data bank and data base specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, to any of the offenses described in subdivision (a).

(d) At sentencing or disposition, the prosecuting attorney shall verify in writing that the requisite samples are required by law, and that they

have been taken, or are scheduled to be taken before the offender is released on probation, or other scheduled release. However, a failure by the prosecuting attorney or any other law enforcement agency to verify sample requirement or collection shall not relieve a person of the requirement to provide samples.

(e) The abstract of judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state's DNA and Forensic Identification Data Base and Data Bank program and be subject to this chapter. However, failure by the court to enter these facts in the abstract of judgment shall not invalidate a plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

SEC. 2. Section 299.5 of the Penal Code is amended to read:

299.5. (a) All DNA and forensic identification profiles and other identification information retained by the Department of Justice pursuant to this chapter are exempt from any law requiring disclosure of information to the public and shall be confidential except as otherwise provided in this chapter.

(b) All evidence and forensic samples containing biological material retained by the Department of Justice DNA Laboratory or other state law enforcement agency are exempt from any law requiring disclosure of information to the public or the return of biological specimens.

(c) Non-DNA forensic identification information may be filed with the offender's file maintained by the Sex Registration Unit of the Department of Justice or in other computerized data bank systems maintained by the Department of Justice.

(d) The DNA and other forensic identification information retained by the Department of Justice pursuant to this chapter shall not be included in the state summary criminal history information. However, nothing in this chapter precludes law enforcement personnel from entering into a person's criminal history information or offender file maintained by the Department of Justice, the fact that the specimens, samples, and print impressions required by this chapter have or have not been collected from that person.

(e) The fact that the blood specimens, saliva samples, and print impressions required by this chapter have been received by the DNA Laboratory of the Department of Justice shall be included in the state summary criminal history information.

The full palm prints of each hand shall be filed and maintained by the Automated Latent Print Section of the Bureau of Criminal Identification and Information of the Department of Justice, and may be included in the state summary criminal history information.

(f) DNA and other forensic identification information shall be released only to law enforcement agencies, including, but not limited to, parole officers of the Department of Corrections, hearing officers of the parole authority, probation officers, the Attorney General's office, district attorneys' offices, and prosecuting city attorneys' offices, or to a court or administrative tribunal, except as specified in this chapter. Dissemination of this information to law enforcement agencies and district attorneys' offices outside this state shall be performed in conformity with the provisions of this chapter. A defendant's DNA and other forensic identification information developed pursuant to this chapter shall be available to his or her defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(g) (1) (A) Any person who knowingly uses an offender sample or DNA profile for other than criminal identification or exclusion purposes, or who knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes, in violation of this chapter, shall be punished by imprisonment in a county jail not exceeding one year or by imprisonment in the state prison.

(B) Any person who, for the purpose of financial gain, knowingly uses an offender sample or DNA profile for other than criminal identification or exclusion purposes or who, for the purpose of financial gain, knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes, in violation of this chapter, shall, in addition to the penalty provided in subparagraph (A), be punished by a criminal fine in an amount three times that of any financial gain received or ten thousand dollars ($10,000), whichever is greater.

(2) (A) If any employee of the Department of Justice knowingly uses an offender sample or DNA profile for other than criminal identification or exclusion purposes, or knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion purposes, in violation of this chapter, the department shall be liable in civil damages to the donor of the DNA identification information in the amount of five thousand dollars ($5,000) for each violation, plus attorney's fees and costs. In the event of multiple disclosures, the total damages available to the donor of the DNA is limited to fifty thousand dollars ($50,000) plus attorney's fees and costs.

(B) (i) Notwithstanding any other law, this shall be the sole and exclusive remedy against the Department of Justice and its employees

available to the donor of the DNA against the Department of Justice and its employees.

(ii) The Department of Justice employee disclosing DNA identification information in violation of this chapter shall be absolutely immune from civil liability under this or any other law.

(3) It is not a violation of this section for a law enforcement agency to publicly disclose the fact of a DNA profile match.

(h) It is not a violation of this chapter to furnish DNA or other forensic identification information of the defendant to his or her defense counsel for criminal defense purposes in compliance with discovery.

(i) It is not a violation of this section to release DNA and other forensic identification information developed pursuant to this chapter to a jury or grand jury, or in a document filed with a court or administrative agency, or as part of a judicial or administrative proceeding, or for this information to become part of the public transcript or record of proceedings.

(j) It is not a violation of this section to include information obtained from a file in a transcript or record of a judicial proceeding, or in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(k) It is not a violation of this section for the DNA Laboratory of the Department of Justice or a local public laboratory to use anonymous DNA records for training, research, statistical analysis of populations, or quality control.

(*l*) It is not a violation of this section to disseminate statistical or research information obtained from the offender's file, the computerized data bank system, any of the DNA laboratory's data bases, or the full palm print file, provided that the subject of the file is not identified and cannot be identified from the information disclosed. All requests for statistical or research information obtained from the DNA data bank shall be cataloged by the Department of Justice. Commencing January 1, 2000, the department shall submit an annual letter to the Legislature including, with respect to each request, the requester's name or agency, the purpose of the request, whether the request is related to a criminal investigation or court proceeding, whether the request was granted or denied, any reasons for denial, costs incurred or estimates of the cost of the request, and the date of the request.

(m) The Department of Justice shall make public the methodology and procedures to be used in its DNA program prior to the commencement of DNA testing in its laboratories. The Department of Justice shall review and consider on an ongoing basis the findings and results of any peer review and validation studies submitted to the department by members of the relevant scientific community experienced in the use of DNA technology. This material shall be

available to criminal defense counsel upon court order made pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(n) In order to maintain the computer system security of the Department of Justice DNA and forensic identification data base and data bank program, the computer software and data base structures used by the DNA Laboratory of the Department of Justice to implement this chapter are confidential.

(o) Nothing in this section shall preclude a court from ordering discovery pursuant to Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

SEC. 3. Section 299.6 of the Penal Code is amended to read:

299.6. (a) Nothing in this chapter shall prohibit the sharing or disseminating of population data base or data bank information with any of the following:

(1) Federal, state, or local law enforcement agencies.

(2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the Department of Justice.

(3) The attorney general's office of any state.

(4) Any third party that the Department of Justice deems necessary to assist the department's crime laboratory with statistical analyses of the population data base or to assist in the recovery or identification of human remains for humanitarian purposes, including identification of missing persons.

(b) Nothing in this chapter shall prohibit the sharing or disseminating of protocol and forensic DNA analysis methods and quality control procedures with any of the following:

(1) Federal, state, or local law enforcement agencies.

(2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the Department of Justice.

(3) The attorney general's office of any state.

(4) Any third party that the Department of Justice deems necessary to assist the department's crime laboratory with analyses of forensic protocol, research methods, or quality control procedures.

(c) The population data base and data bank of the DNA Laboratory of the Department of Justice may be made available to and searched by the FBI and any other agency participating in the FBI's CODIS System or any other national law enforcement data bank system.

(d) The Department of Justice may provide portions of the blood specimens and saliva samples collected pursuant to this chapter to local public DNA laboratories for identification purposes provided that the privacy provisions of this section are followed by the local laboratory and if each of the following conditions is met:

(1) The procedures used by the local public DNA laboratory for the handling of specimens and samples and the disclosure of results are the same as those established by the Department of Justice pursuant to Sections 297, 298, and 299.5.

(2) The methodologies and procedures used by the local public DNA laboratory for DNA or forensic identification analysis are compatible with those established by the Department of Justice pursuant to subdivision (i) of Section 299.5, or otherwise are determined by the Department of Justice to be valid and appropriate for identification purposes.

(3) Only tests of value to law enforcement for identification purposes are performed and a copy of the results of the analysis are sent to the Department of Justice.

(4) All provisions of this section concerning privacy and security are followed.

(5) The local public DNA laboratory assumes all costs of securing the specimens and samples and provides appropriate tubes, labels, and instructions necessary to secure the samples.

(e) Any local DNA laboratory that produces DNA profiles of known reference samples for inclusion within the permanent files of the state's DNA Data Bank program shall comply with and be subject to all of the rules, regulations, and restrictions of this chapter and shall follow the policies of the DNA Laboratory of the Department of Justice.

SEC. 4. This act shall only become operative if both this act and Senate Bill No. 83 are enacted and become effective.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 907

An act to amend Sections 188.5 and 31010 of, to add Section 188.51 to, to repeal Section 31050 of, and to add Chapter 4.6 (commencing with Section 31070) to Division 17 of, the Streets and Highways Code, relating to highways, and making an appropriation therefor.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 188.5 of the Streets and Highways Code is amended to read:

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

(1) The department has determined that in order to provide maximum safety for the traveling public and to ensure continuous and unimpeded operation of the state's transportation network, six state-owned toll bridges are in need of a seismic safety retrofit, and one state-owned toll bridge is in need of a partial retrofit and a partial replacement.

(2) The bridges identified by the department as needing seismic retrofit are the Benicia-Martinez Bridge, the Carquinez Bridge, the Richmond-San Rafael Bridge, the San Mateo-Hayward Bridge, the San Pedro-Terminal Island Bridge (also known as the Vincent Thomas Bridge), the San Diego-Coronado Bridge, and the west span of the San Francisco-Oakland Bay Bridge. The department has also identified the east span of the San Francisco-Oakland Bay Bridge as needing to be replaced. That replacement span will be safer, stronger, longer lasting, and more cost efficient to maintain than completing a seismic retrofit for the current east span.

(3) The south span of the Carquinez Bridge is to be replaced pursuant to Regional Measure 1, as described in subdivision (b) of Section 30917.

(4) The cost estimate to retrofit the state-owned toll bridges and to replace the east span of the San Francisco-Oakland Bay Bridge is four billion six hundred thirty-seven million dollars ($4,637,000,000), as follows:

(A) The Benicia-Martinez Bridge retrofit is one hundred ninety million dollars ($190,000,000).

(B) The north span of the Carquinez retrofit is one hundred twenty-five million dollars ($125,000,000).

(C) The Richmond-San Rafael Bridge retrofit is six hundred sixty-five million dollars ($665,000,000).

(D) The San Mateo-Hayward Bridge retrofit is one hundred ninety million dollars ($190,000,000).

(E) The San Pedro-Terminal Island Bridge retrofit is sixty-two million dollars ($62,000,000).

(F) The San Diego-Coronado Bridge retrofit is one hundred five million dollars ($105,000,000).

(G) The west span of the San Francisco-Oakland Bay Bridge retrofit, as a lifeline bridge, is seven hundred million dollars ($700,000,000).

(H) Replacement of the east span of the San Francisco-Oakland Bay Bridge is two billion six hundred million dollars ($2,600,000,000).

(b) It is the intent of the Legislature that the following amounts from the following funds shall be allocated until expended, for the seismic retrofit or replacement of state-owned toll bridges:

(1) Six hundred fifty million dollars ($650,000,000) from the 1996 Seismic Retrofit Account in the Seismic Retrofit Bond Fund of 1996 for the seven state-owned toll bridges identified by the department as requiring seismic safety retrofit or replacement.

(2) One hundred forty million dollars ($140,000,000) in surplus revenues generated under the Seismic Retrofit Bond Act of 1996 that are in excess of the amount actually necessary to complete Phase Two of the state's seismic retrofit program. These excess funds shall be reallocated to assist in financing seismic retrofit of the state-owned toll bridges.

(3) Fifteen million dollars ($15,000,000) from the Vincent Thomas Toll Bridge Revenue Account.

(4) The funds necessary to meet both of the following:

(A) A principal obligation of two billion two hundred eighty-two million dollars ($2,282,000,000) from the seismic retrofit surcharge, including any interest therefrom, imposed pursuant to Section 31010, subject to the limitation set forth in subdivision (c) and subdivision (b) of Section 31010.

(B) All costs of financing, including capitalized interest, reserves, costs of issuance, costs of credit enhancements and any other financial products necessary or desirable in connection therewith, and any other costs related to financing.

(5) Thirty-three million dollars ($33,000,000) from the San Diego-Coronado Toll Bridge Revenue Fund.

(6) Not less than seven hundred forty-five million dollars ($745,000,000) from the State Highway Account to be used toward the eight hundred seventy-five million dollars ($875,000,000) state contribution, to be achieved as follows:

(A) (i) Two hundred million dollars ($200,000,000) to be appropriated for the state-local transportation partnership program described in paragraph (7) of subdivision (d) of Section 164 for the 1998–99 fiscal year.

(ii) The remaining funds intended for that program and any program savings to be made available for toll bridge seismic retrofit.

(B) A reduction of not more than seventy-five million dollars ($75,000,000) in the funding level specified in paragraph (4) of subdivision (d) of Section 164 for traffic system management.

(C) Three hundred million dollars ($300,000,000) in accumulated savings by the department achieved from better efficiency and lower costs.

(7) Not more than one hundred thirty million dollars ($130,000,000) from the Transit Capital Improvement Program funded by the Transportation Planning and Development Account in the State Transportation Fund to be used toward the eight hundred seventy-five million dollars ($875,000,000) state contribution. If the contribution in subparagraph (A) of paragraph (6) exceeds three hundred seventy million dollars ($370,000,000), it is the intent that the amount from the Transit Capital Improvement Program shall be reduced by an amount that is equal to that excess.

(8) (A) The funds necessary to meet principal obligations of not less than six hundred forty-two million dollars ($642,000,000) from the state's share of the federal Highway Bridge Replacement and Rehabilitation (HBRR) Program.

(B) If the project costs exceed four billion six hundred thirty-seven million dollars ($4,637,000,000), the department may program not more than four hundred forty-eight million dollars ($448,000,000) in project savings or other available resources from the Interregional Transportation Improvement Plan, the State Highway Operation Protection Plan, or federal bridge funds for that purpose.

(C) None of the funds identified in subparagraph (B) may be expended for any purpose other than the conditions and design features described in paragraph (9).

(9) The estimated cost of replacing the San Francisco-Oakland Bay Bridge listed in subparagraph (H) of paragraph (4) of subdivision (a) is based on the following conditions:

(A) The new bridge shall be located north adjacent to the existing bridge and shall be the Replacement Alternative N-6 (preferred) Suspension Structure Variation, as specified in the Final Environmental Impact Statement, dated May 1, 2001, submitted by the department to the Federal Highway Administration.

(B) The main span of the bridge shall be in the form of a single tower cable suspension design and shall be the Replacement Alternative N-6 (preferred) Suspension Structure Variation, as specified in the Final Environmental Impact Statement, dated May 1, 2001, submitted by the department to the Federal Highway Administration.

(C) The roadway in each direction shall consist of five lanes, each lane will be 12 feet wide, and there shall be 10-foot shoulders as an

emergency lane for public safety purposes on each side of the main-traveled way.

(c) If the actual cost of retrofit or replacement, or both retrofit and replacement, of toll bridges is less than the cost estimate of four billion six hundred thirty-seven million dollars ($4,637,000,000), there shall be a reduction in the amount provided in paragraph (4) of subdivision (b) equal to the proportion of total funds committed to complete the projects funded from funds generated from paragraph (4) of subdivision (b) as compared to the total funds from paragraphs (6), (7), and (8) of subdivision (b), and there shall be a proportional reduction in the amount specified in paragraph (8) of subdivision (b).

(d) (1) The department shall report annually to the Legislature and the Governor as to the amount of funds used for that purpose from each source specified in subdivision (b) and submit an updated cost estimate. Upon substantial completion of the seismic retrofit work of the state-owned toll bridges, the department shall submit a final report, prepared by an independent accounting firm, identifying the sources and uses of the funds. That report shall serve as the basis for any proportional reduction in funding as specified in subdivision (c).

(2) If the department determines that the actual costs exceed the amounts identified in subparagraph (B) of paragraph (8) of subdivision (b), the department shall report to the Legislature within 90 days from the date of that determination as to the difference and the reason for the increase in costs.

(e) Notwithstanding any other provision of law, the commission shall adopt fund estimates consistent with subdivision (b) and provide flexibility so that state funds can be made available to match federal funds made available to regional transportation planning agencies.

(f) For the purposes of this section, ''principal obligations'' are the amount of funds generated, either in cash, obligation authority, or the proceeds of a bond or other indebtedness.

SEC. 2. Section 188.51 is added to the Streets and Highways Code, to read:

188.51. (a) If the department utilizes its authority under Chapter 4 (commencing with Section 14550) of Part 5.3 of Division 3 of the Government Code to issue federal highway grant anticipation notes (GARVEE Bonds) from the state share of federal obligation authority to fund the projects identified in subdivision (a) of Section 188.5, Section 14553.6 of the Government Code shall not apply.

(b) State expenditures for the purposes of subdivision (a) shall not exceed 5 percent of the annual amount of federal obligation authority received by the state for a period determined by the department.

SEC. 3. Section 31010 of the Streets and Highways Code is amended to read:

31010. (a) There is hereby imposed a seismic retrofit surcharge equal to one dollar ($1) per vehicle for passage on the bay area bridges, except for vehicles that are authorized toll-free passage on these bridges.

(b) Funds generated by subdivision (a) may not be used to repay nontoll revenues committed to fund projects identified in paragraph (2) of subdivision (a) of Section 188.5. Following the date of the submission of the final report required in subdivision (d) of Section 188.5, funds generated pursuant to subdivision (a) that are in excess of those needed to meet the toll commitment as specified by paragraph (4) of subdivision (b) of Section 188.5, including annual debt service payments, if any, required to support the commitment, and other elements required to meet the obligations of the department's financing plan, shall be available to the authority for funding, consistent with Sections 30913 and 30914, the purposes and projects described in those sections. The department shall transfer to the authority on an annual basis the funds made available to the authority under this subdivision upon receiving notification from the authority that the governing board of the authority has passed a resolution, by majority vote, requesting that transfer.

(c) There shall be no increase in tolls beyond the level identified in subdivision (a) for the purposes identified in paragraph (4) of subdivision (a) of Section 188.5, except that the department shall have the authority to increase the seismic retrofit surcharge for debt service purposes only if the bank finds and the Department of Finance confirms that both of the following apply:

(1) Extraordinary circumstances exist that jeopardize the payment of debt service for which toll revenues are authorized, and all other financial resources for meeting toll commitments have been exhausted.

(2) Bonds issued under Chapter 4.3 (commencing with Section 30950) shall not be impaired solely by action taken under this section, as evidenced by confirmation of the then existing ratings on those bonds, by the rating agencies then rating the bonds.

(d) The department shall extend the term of the financing plan developed under Section 31071, for the purposes of funding the projects described in Sections 30913 and 30914, for a period of not more than 30 years commencing on January 1, 2008, if both of the following conditions apply:

(1) The authority submits a request for the extension to the department on or before October 15, 2001, or on a later date requested by the authority and approved by the director.

(2) The Director of Transportation determines that the extension would satisfy the financial requirements of the federal Department of Transportation.

(e) This section shall remain in effect only until the date that the California Transportation Commission notifies the Secretary of State

that sufficient funds have been generated to meet the obligations identified in paragraph (4) of subdivision (b) of Section 188.5, and repayment of any outstanding debt secured by tolls, and as of that date is repealed. The California Transportation Commission shall provide the notice described in this subdivision upon making the determination set forth in this subdivision.

SEC. 4. Section 31050 of the Streets and Highways Code is repealed.

SEC. 5. Chapter 4.6 (commencing with Section 31070) is added to Division 17 of the Streets and Highways Code, to read:

## CHAPTER 4.6. STATE-OWNED TOLL BRIDGE SEISMIC RETROFIT FINANCING ACT OF 2001

31070. The Legislature hereby finds and declares all of the following:

(a) Following the 1989 Loma Prieta earthquake, legislation was enacted to make seismic safety a top transportation priority in this state. In the wake of the Northridge earthquake of 1994, when nine major freeway bridges were destroyed and 11 major highways wee closed, seismic retrofit of the state's bridges and highways again became the number one priority on the state's transportation agenda.

(b) In 1996, voters approved Proposition 192, a two billion dollar ($2,000,000,000) bond measure for state highway seismic retrofit. This funding measure includes the costs of retrofitting seven state-owned toll bridges, five in the San Francisco-Oakland Bay area and two in southern California. Replacement costs for the eastern span of the San Francisco-Oakland Bay Bridge were factored in as well.

(c) Subsequent to the adoption of Proposition 192, new cost estimates by the department increase the toll bridge retrofit program from six hundred fifty million dollars ($650,000,000) to two billion six hundred million dollars ($2,600,000,000). To address this increase, the Legislature enacted legislation in 1997, establishing the compromise of a 50/50 funding agreement between the state and local toll payers to finance all state-owned bridges in the San Francisco-Oakland Bay area, Los Angeles, and San Diego.

(d) It is the further intent of the Legislature that the department address the funding deficiency through a combination of financing options. These options may or may not include obtaining a loan under the federal Transportation Infrastructure Finance and Innovation Act of 1998 (P.L. 105-178), a program authorized by the Congress of the United States in 1998 to provided credit assistance for large transportation projects.

(e) Other financing options include revenue bonds and commercial paper should be issued under the authority of the California Infrastructure and Economic Development Financing Bank, the California Transportation Commission, or other, appropriate entity.

31070.5. For the purposes of this chapter, the following terms have the following meanings, unless the context requires otherwise:

(a) ''Authority'' means the Bay Area Toll Authority established under Section 30950.

(b) ''Account'' means the Toll Bridge Seismic Retrofit Account established in the State Transportation Fund under Section 188.12.

(c) ''Bank'' means the California Infrastructure and Economic Development Bank established under Section 63021 of the Government Code.

(d) ''Bay area bridges'' means the state-owned toll bridges in the region within the area of the jurisdiction of the Metropolitan Transportation Commission.

(e) ''Bonds'' has the meaning defined in subdivision (e) of Section 63010 of the Government Code.

(f) ''Department'' means the Department of Transportation.

(g) ''TIFIA'' means the federal Transportation Infrastructure Finance and Innovation Act of 1998 (P.L. 105-178).

(h) ''Toll surcharge'' means the seismic retrofit surcharge imposed under Section 31010.

31070.7. The department has full and sole responsibility for completion of all seismic retrofit projects on the bay area bridges.

31071. (a) The department may enter into financing agreements with the bank for the purpose of borrowing funds to finance or refinance the seismic retrofit project costs identified in paragraph (4) of subdivision (a) of Section 188.5. The bank may issue bonds for this purpose, pursuant to the authority granted to it under Chapter 5 (commencing with Section 63070) of Chapter 2 of Division 1 of Title 6.7 of the Government Code, and deposit the proceeds from the bonds into the account. The amount of borrowing may be increased to fund necessary reserves, capitalized interest, interim bonds, including, but not limited to, commercial paper, costs of issuance, and administrative, financial legal and incidental services related to the bonds. The department shall pursue the most cost-effective and efficient financing plan for the bridge work identified in paragraph (4) of subdivision (a) of Section 188.5.

(b) To the extent provided in the governing documents, each of the bonds issued under this section shall be payable from, and secured by, all or a portion of the toll surcharge revenue in the account and the assets in that account.

(c) Prior to the issuance of bonds payable from the toll surcharge, the bank shall confirm that bonds issued under Chapter 4.3 (commencing with Section 30950) shall not be impaired solely by action taken under this section, as evidenced by confirmation of the then existing ratings on these bonds, by the rating agencies then rating the bonds.

31071.3. Notwithstanding any other provision of law, during the construction period, all revenues generated from the toll surcharge shall be available to the department only for the construction and financing purposes of the toll bridge seismic retrofit program.

31071.5. (a) Bonds issued under this chapter may not be deemed to constitute a debt or liability of the state or of any political subdivision thereof, other than the bank, or a pledge of the faith and credit of the state or of any political subdivision thereof, but shall be payable solely from the account, and the assets of the account, and the security provided by the account. All bonds issued under this chapter shall contain on the face of the bonds a statement to this effect.

(b) Notwithstanding any other provision of law, Article 3 (commencing with Section 63040) of, Article 4 (commencing with 63042) of, and Article 5 (commencing with Section 63043) of Chapter 2 of Division 1 of Title 6.7 of the Government Code do not apply to any financing provided by the bank to, or at the request of, the department in connection with the account.

31072. Any federal funds received by the department as a direct loan or line of credit under TIFIA are hereby appropriated to the department for transfer to the account for the purposes of that account.

31073. The department may make the loans and transfers authorized under Section 14556.7 of the Government Code and Section 188.14 to provide adequate cash flow for obligation service requirements resulting from the financing authority provided under Sections 31071 and 31072.

SEC. 6. This act shall not be construed to negatively impact any project that is programmed prior to January 1, 2002, in the state transportation improvement program.

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## CHAPTER 908

An act to add Section 14556.33 to the Government Code, relating to transportation.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 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 enhance the ability of regional and local governmental entities to deliver critical transportation capital improvement projects in an expeditious manner.

SEC. 2. Section 14556.33 is added to the Government Code, to read:

14556.33. (a) A regional or local entity that is a lead applicant agency under Article 5 (commencing with Section 14556.40), may apply to the commission for a letter of no prejudice for the project. If approved by the commission, the letter of no prejudice allows the regional or local entity to expend its own funds for any component of the transportation project.

(b) The amount expended under subdivision (a) shall be reimbursed by the state if all of the following conditions are met:

(1) The project is included in an adopted regional transportation plan.

(2) The department makes an allocation for the project pursuant to Section 14556.20.

(3) The expenditures made by the regional or local entity are eligible for reimbursement in accordance with state and federal laws and procedures. In the event expenditures made by the regional or local entity are determined to be ineligible, the state has no obligation to reimburse those expenditures.

(4) The regional or local entity complies with all legal requirements for the project, including the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(c) Upon execution of an agreement with the department to transfer reimbursement funds for a project described in subdivision (a), the commission may delay reimbursement pursuant to this section only if cash-management issues prevent immediate repayment.

(d) The commission, in consultation with regional and local entities, and the department, may develop guidelines to implement this section.

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## CHAPTER 909

An act to amend Section 12940 of the Government Code, relating to unlawful employment practices.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 12940 of the Government Code is amended to read:

12940. It shall be an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(1) This part does not prohibit an employer from refusing to hire or discharging an employee with a physical or mental disability, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, where the employee, because of his or her physical or mental disability, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger his or her health or safety or the health or safety of others even with reasonable accommodations.

(2) This part does not prohibit an employer from refusing to hire or discharging an employee who, because of the employee's medical condition, is unable to perform his or her essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. Nothing in this part shall subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee who, because of the employee's medical condition, is unable to perform his or her essential duties, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations.

(3) Nothing in this part relating to discrimination on account of marital status shall do either of the following:

(A) Affect the right of an employer to reasonably regulate, for reasons of supervision, safety, security, or morale, the working of spouses in the same department, division, or facility, consistent with the rules and regulations adopted by the commission.

(B) Prohibit bona fide health plans from providing additional or greater benefits to employees with dependents than to those employees without or with fewer dependents.

(4) Nothing in this part relating to discrimination on account of sex shall affect the right of an employer to use veteran status as a factor in employee selection or to give special consideration to Vietnam era veterans.

(b) For a labor organization, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of any person, to exclude, expel or restrict from its membership the person, or to provide only second-class or segregated membership or to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of the person in the election of officers of the labor organization or in the selection of the labor organization's staff or to discriminate in any way against any of its members or against any employer or against any person employed by an employer.

(c) For any person to discriminate against any person in the selection or training of that person in any apprenticeship training program or any other training program leading to employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation of the person discriminated against.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any publication, or to make any non-job-related inquiry of an employee or applicant, either verbal or through use of an application form, that expresses, directly or indirectly, any limitation, specification, or discrimination as to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or sexual orientation, or any intent to make any such limitation, specification or discrimination.

(e) (1) Except as provided in paragraph (2) or (3), for any employer or employment agency to require any medical or psychological examination of an applicant, to make any medical or psychological inquiry of an applicant, to make any inquiry whether an applicant has a mental disability or physical disability or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may inquire into the ability of an applicant to perform job-related

functions and may respond to an applicant's request for reasonable accommodation.

(3) Notwithstanding paragraph (1), an employer or employment agency may require a medical or psychological examination or make a medical or psychological inquiry of a job applicant after an employment offer has been made but prior to the commencement of employment duties, provided that the examination or inquiry is job-related and consistent with business necessity and that all entering employees in the same job classification are subject to the same examination or inquiry.

(f) (1) Except as provided in paragraph (2), for any employer or employment agency to require any medical or psychological examination of an employee, to make any medical or psychological inquiry of an employee, to make any inquiry whether an employee has a mental disability, physical disability, or medical condition, or to make any inquiry regarding the nature or severity of a physical disability, mental disability, or medical condition.

(2) Notwithstanding paragraph (1), an employer or employment agency may require any examinations or inquiries that it can show to be job-related and consistent with business necessity. An employer or employment agency may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that worksite.

(g) For any employer, labor organization, or employment agency to harass, discharge, expel, or otherwise discriminate against any person because the person has made a report pursuant to Section 11161.8 of the Penal Code that prohibits retaliation against hospital employees who report suspected patient abuse by health facilities or community care facilities.

(h) For any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.

(i) For any person to aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to attempt to do so.

(j) (1) For an employer, labor organization, employment agency, apprenticeship training program or any training program leading to employment, or any other person, because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, to harass an employee, an applicant, or a person providing services pursuant to a contract. Harassment of an employee, an applicant, or a person providing services pursuant to a contract by an employee other than an agent or supervisor shall be unlawful if the entity, or its agents or

supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring. Loss of tangible job benefits shall not be necessary in order to establish harassment.

(2) The provisions of this subdivision are declaratory of existing law, except for the new duties imposed on employers with regard to harassment.

(3) An employee of an entity subject to this subdivision is personally liable for any harassment prohibited by this section that is perpetrated by the employee, regardless of whether the employer or covered entity knows or should have known of the conduct and fails to take immediate and appropriate corrective action.

(4) (A) For purposes of this subdivision only, ''employer'' means any person regularly employing one or more persons or regularly receiving the services of one or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities. The definition of ''employer'' in subdivision (d) of Section 12926 applies to all provisions of this section other than this subdivision.

(B) Notwithstanding subparagraph (A), for purposes of this subdivision, ''employer'' does not include a religious association or corporation not organized for private profit, except as provided in Section 12926.2.

(C) For purposes of this subdivision, ''harassment'' because of sex includes sexual harassment, gender harassment, and harassment based on pregnancy, childbirth, or related medical conditions.

(5) For purposes of this subdivision, ''a person providing services pursuant to a contract'' means a person who meets all of the following criteria:

(A) The person has the right to control the performance of the contract for services and discretion as to the manner of performance.

(B) The person is customarily engaged in an independently established business.

(C) The person has control over the time and place the work is performed, supplies the tools and instruments used in the work, and performs work that requires a particular skill not ordinarily used in the course of the employer's work.

(k) For an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

(*l*) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program

leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with his or her religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate the religious belief or observance without undue hardship on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, and reasonable time necessary for travel prior and subsequent to a religious observance.

(m) For an employer or other entity covered by this part to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1) or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship to its operation.

(n) For an employer or other entity covered by this part to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition.

(o) For an employer or other entity covered by this part, to subject, directly or indirectly, any employee, applicant, or other person to a test for the presence of a genetic characteristic.

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## CHAPTER 910

An act to amend Section 12926.2 of the Government Code, relating to employment.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 12926.2 of the Government Code is amended to read:

12926.2. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) ''Religious corporation'' means any corporation formed under, or otherwise subject to, Part 4 (commencing with Section 9110) or Part 6 (commencing with Section 10000) of Division 2 of Title 1 of the Corporations Code, and also includes a corporation that is formed primarily or exclusively for religious purposes under the laws of any other state to administer the affairs of an organized religious group and that is not organized for private profit.

(b) ''Religious duties'' means duties of employment connected with carrying on the religious activities of a religious corporation or association.

(c) Notwithstanding subdivision (d) of Section 12926 and except as otherwise provided in subdivision (d) of this section, ''employer'' includes a religious corporation or association with respect to persons employed by the religious association or corporation to perform duties, other than religious duties, at a health care facility operated by the religious association or corporation for the provision of health care that is not restricted to adherents of the religion that established the association or corporation.

(d) ''Employer'' does not include a religious corporation with respect to either the employment, including promotion, of an individual of a particular religion, or the application of the employer's religious doctrines, tenets, or teachings, in any work connected with the provision of health care.

(e) Notwithstanding subdivision (d) of Section 12926, ''employer'' does not include a nonprofit public benefit corporation incorporated to provide health care on behalf of a religious organization under Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, with respect to employment, including promotion, of an individual of a particular religion in an executive or pastoral-care position connected with the provision of health care.

(f) (1) Notwithstanding any other provision of law, a nonprofit public benefit corporation formed by, or affiliated with, a particular religion and that operates an educational institution as its sole or primary activity, may restrict employment, including promotion, in any or all employment categories to individuals of a particular religion.

(2) Notwithstanding paragraph (1) or any other provision of law, employers that are nonprofit public benefit corporations specified in paragraph (1) shall be subject to the provisions of this part in all other

respects, including, but not limited to, the prohibitions against discrimination made unlawful employment practices by this part.

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## CHAPTER 911

An act to add Sections 13103.5 and 14532 to the Government Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 13103.5 is added to the Government Code, to read:

13103.5. (a) The department shall prepare an annual audit report examining any expenditures made pursuant to the allocations authorized under Article XIX B of the California Constitution.

(b) The report shall be made available to the public and shall be submitted to both houses of the Legislature.

(c) This section shall become operative on the date that Assembly Constitutional Amendment No. 4 (Res. Ch. 87, Stats. 2001) is approved by the voters.

SEC. 2. Section 14532 is added to the Government Code, to read:

14532. (a) In appropriating the funds allocated under paragraph (C) of subdivision (c) of Article XIX B of the California Constitution, the funds shall be apportioned in accordance with the apportionment formula set forth in paragraph (5) of subdivision (c) of Section 7104 of the Revenue and Taxation Code.

(b) In appropriating the funds allocated under paragraph (D) of subdivision (c) of Article XIX B of the California Constitution, the funds shall be apportioned in accordance with the apportionment formulas set forth in subparagraphs (A) and (B) of paragraph (4) of subdivision (c) of Section 7104 of the Revenue and Taxation Code.

(c) The funds appropriated in accordance with subdivisions (a) and (b) are subject to subdivisions (d) to (f), inclusive, and subdivision (h), of Section 7104 of the Revenue and Taxation Code.

(d) This section shall become operative on the date that Assembly Constitutional Amendment No. 4 (Res. Ch. 87, Stats. 2001) is approved by the voters.

SEC. 3. (a) Notwithstanding any other provision of law, with respect to Assembly Constitutional Amendment No. 4 (Res. Ch. 87,

Stats. 2001), all ballots of the election shall have printed thereon and in a square thereof, exclusively the words: ''TRANSPORTATION CONGESTION IMPROVEMENT ACT. ALLOCATION OF EXISTING MOTOR VEHICLE FUEL SALES AND USE TAX REVENUES FOR TRANSPORTATION PURPOSES ONLY. LEGISLATIVE CONSTITUTIONAL AMENDMENT.'' and in the same square under those words, the following in 8-point type: ''Requires, effective July 1, 2003, existing revenues resulting from state sales and use taxes on the sale of motor vehicle fuel be used for transportation purposes as provided by law until June 30, 2008. Requires, effective July 1, 2008, existing revenues resulting from state sales and use taxes be used for public transit and mass transportation; city and county street and road repairs and improvements; and state highway improvements. Imposes the requirement for a two-thirds of the Legislature to suspend or modify the percentage allocation of the revenues. (At this point, the Attorney General shall include the financial impact summary prepared pursuant to Section 9087 of the Elections Code and Section 88003 of the Government Code).'' Opposite the square, there shall be left spaces in which the voters may place a cross in the manner required by law to indicate whether they vote for or against the act.

(b) Notwithstanding Sections 13247 and 13281 of the Elections Code, the language in subdivision (a) shall be the only language included in the ballot label for the condensed statement of the ballot title, and the Attorney General may not supplement, subtract from, or revise that language, except that the Attorney General may include the financial impact summary prepared pursuant to Section 9087 of the Elections Code and Section 88003 of the Government Code. The ballot label is the condensed statement of the ballot title and the financial impact summary.

(c) Where the voting in the election is done by means of voting machines used pursuant to law in a manner that carries out the intent of this section, the use of the voting machines and the expression of the voter's choice by means thereof are in compliance with this section.

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

In order to enact, at the earliest possible time, legislation necessary for the implementation of Article XIX B of the California Constitution, as proposed to be added by Assembly Constitutional Amendment No. 4 (Res. Ch. 87, Stats. 2001), it is necessary that this act take effect immediately.

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# CHAPTER 912

An act to amend Section 25000.5 of, and to add Chapter 8.3 (commencing with Section 25722) to Division 15 of, the Public Resources Code, relating to energy resources.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 25000.5 of the Public Resources Code is amended to read:

25000.5. (a) The Legislature finds and declares that overdependence on the production, marketing, and consumption of petroleum based fuels as an energy resource in the transportation sector is a threat to the energy security of the state due to continuing market and supply uncertainties. In addition, petroleum use as an energy resource contributes substantially to the following public health and environmental problems: air pollution, acid rain, global warming, and the degradation of California's marine environment and fisheries.

(b) Therefore, it is the policy of this state to fully evaluate the economic and environmental costs of petroleum use, and the economic and environmental costs of other transportation fuels, including the costs and values of environmental impacts, and to establish a state transportation energy policy that results in the least environmental and economic cost to the state. In pursuing the ''least environmental and economic cost'' strategy, it is the policy of the state to exploit all practicable and cost-effective conservation and improvements in the efficiency of energy use and distribution, and to achieve energy security, diversity of supply sources, and competitiveness of transportation energy markets based on the least environmental and economic cost.

(c) It is also the policy of this state to minimize the economic and environmental costs due to the use of petroleum-based and other transportation fuels by state agencies. In implementing a least-cost economic and environmental strategy for state fleets, it is the policy of the state to implement practicable and cost-effective measures, including, but not necessarily limited to, the purchase of the cleanest and most efficient automobiles and replacement tires, the use of alternative fuels in its fleets, and other conservation measures.

(d) For the purposes of this section, ''petroleum based fuels'' means fuels derived from liquid unrefined crude oil, including natural gas liquids, liquefied petroleum gas, or the energy fraction of methyl tertiary-butyl ether (MTBE) or other ethers that is not attributed to natural gas.

SEC. 2. Chapter 8.3 (commencing with Section 25722) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 8.3. STATE VEHICLE FLEET

25722. (a) On or before January 31, 2003, the commission , the Department of General Services, and the State Air Resources Board, in consultation with any other state agency that the commission , the department, and the state board deem necessary, shall develop and adopt fuel-efficiency specifications governing the purchase by the state of motor vehicles and replacement tires that, on an annual basis, will reduce petroleum consumption of the state vehicle fleet to the maximum extent practicable and cost-effective.

(b) In developing the specifications, the commission and the department shall jointly conduct a study to examine state vehicle purchasing patterns, including the purchase of after market tires, and to analyze the costs and benefits of reducing the energy consumption of the state vehicle fleet by no less than 10 percent on or before January 1, 2005.

(c) The study shall include an analysis of all of the following topics:

(1) Use of alternative fuels.

(2) Use of fuel-efficient vehicles.

(3) Costs and benefits of decreasing the size of the state vehicle fleet.

(4) Reduction in vehicle trips and increase in use of alternative means of transportation.

(5) Improved vehicle maintenance.

(6) Costs and benefits of using fuel-efficient tires relative to using retreaded tires, as described in the Retreaded Tire Program (Chapter 7 (commencing with Section 42400) of Part 3 of Division 30 of the Public Resources Code).

(7) The costs and benefits of purchasing high fuel efficiency gasoline vehicles, including hybrid electric vehicles, instead of flexible fuel vehicles.

(d) On or before January 31, 2003, and annually thereafter, the commission, the Department of General Services, and the State Air Resources Board, in consultation with any other state agency that the commission, the department, and the state board deem necessary, shall develop and adopt air pollution emission specifications governing the purchase by the state of passenger cars and light-duty trucks that meet or exceed California's Ultra-Low Emission Vehicle (ULEV) standards for exhaust emissions (13 Cal. Code Regs. 1960.1).

(e) If the study described in subdivision (b) determines that lower cost measures exist that deliver petroleum reductions equivalent to applicable federal requirements governing the state purchase of

passenger cars and light-duty trucks, the state shall pursue a waiver from those federal requirements.

25723. On or before January 31, 2003, the commission, in consultation with any other state agency that the commission deems necessary, shall develop and adopt recommendations for consideration by the Governor and the Legislature of a California State Fuel-Efficient Tire Program. The commission shall make recommendations on all of the following items:

(a) Establishing a test procedure for measuring tire fuel efficiency.

(b) Development of a data base of fuel efficiency of existing tires in order to establish an accurate baseline of tire efficiency.

(c) A rating system for tires that provides consumers with information on the fuel efficiency of individual tire models.

(d) A consumer-friendly system to disseminate tire fuel-efficiency information as broadly as possible. The commission shall consider labeling, Web site listing, printed fuel economy guide booklets, and mandatory requirements for tire retailers to provide fuel-efficiency information.

(e) A study to determine the safety implications, if any, of different policies to promote fuel efficient replacement tires in the consumer market.

(f) A mandatory fuel-efficiency standard for all after market tires sold in California.

(g) Consumer incentive programs that would offer a rebate to purchasers of replacement tires that are more fuel efficient than the average replacement tire.

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## CHAPTER 913

An act to add Article 2.5 (commencing with Section 49430) to Chapter 9 of Part 27 of the Education Code, relating to pupil health, and making an appropriation therefor.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

I am signing Senate Bill 19, which will help to significantly improve the nutrition and eating habits of California's school children. This bill establishes, as of January 1, 2004, various prohibitions on the sale of beverages in elementary and middle schools and places nutritional standards on the type of foods that may be sold to pupils during school breaks and through vending machines. The bill also increases the reimbursement a school receives for free and reduced-price meals and permits schools districts to convene a Child Nutrition and Physical Activity Advisory Committee. The bill appropriates $5.5 million

for grants to local school districts to implement the new nutrition standards and for monitoring and technical assistance costs of the State Department of Education.

Childhood obesity has become an epidemic in the United States and is a primary factor in type 2 diabetes and other long-term health problems. While poor diet and physician inactivity have been found to adversely influence the ability to learn and decrease motivation and attentiveness, healthy food has a positive impact on academic achievement.

While I am supportive of the new standards contained in SB19, I am deleting the appropriation of $5.5 million in the bill because it is premature to allocate General Fund without first exploring the use of federal funds for this purpose. California does not currently use its full allotment of federal child nutrition funding that may be available to assist local districts in meeting the nutrition standards in this bill. Since the provisions of the bill are not intended to be operative for another two years, there is sufficient time to consider alternative funding options without jeopardizing timely implementation of the new standards.

GRAY DAVIS, Governor

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

SECTION 1. The Legislature finds and declares as follows:

(a) Childhood obesity has reached epidemic levels in California and throughout the nation. Recent studies have shown that more than 30 percent of California youth are overweight and that adolescent obesity has doubled over the past two decades. In some California school districts, as many as 50 percent of pupils are overweight.

(b) Overweight and obese children are at higher risk for long-term health problems, including cardiovascular disease, stroke, hypertension, high blood pressure, gallbladder disease, Type 2 diabetes, asthma, and certain cancers. The lives of overweight youth are often also affected by discrimination, psychological stress, poor body image, and low self-esteem. Eighty percent of obese adolescents remain obese as adults.

(c) Two-thirds of all deaths in California result from four chronic diseases: heart disease, cancer, stroke, and diabetes. Health experts agree that one of the most effective ways to prevent these chronic diseases is to establish policies and programs that encourage children and adolescents to develop healthy eating and exercise habits they can maintain throughout their lives.

(d) A child who is physically healthy is more likely to be academically motivated, alert, and successful. Results from the 1999 Physical Fitness test showed that only 20 percent of pupils in grades 5, 7, and 9 met the requirement to be considered fit.

(e) Healthy eating also plays an important role in learning and cognitive development. Poor diet has been found to adversely influence the ability to learn and to decrease motivation and attentiveness.

(f) The school environment plays an influential role in the foods children eat nearly every day. While the United States Department of Agriculture (USDA) regulates the nutrient content of meals sold under

its reimbursable meal program, similar standards do not exist for ''competitive foods'' that are sold outside the USDA meal programs. Competitive foods are often very high in added sugar, sodium, and fat.

(g) The state's support of school food services is inadequate. The State Department of Education monitors schools only once every five years and lacks the resources to provide any technical assistance. The last time the state increased the state meal subsidy, beyond a cost-of-living adjustment, was in 1981, leaving California ranked 41st in the nation in school meal reimbursement rates. In order to generate revenue, many schools sell or allow vendors to sell competitive foods on campus.

(h) In a survey conducted in 2000, 95 percent of responding California school districts reported that they sell fast foods, the most common of which are sodas, pizza, cookies, chips, and burritos, contributing to the fact that carbonated drinks are the single biggest source of refined sugars in the American diet, approximately 70 percent of children in the United States who are 2 to 11 years of age exceeded current dietary recommendations for intakes of total and saturated fat, and only 21 percent of California children meet the goal of eating five servings of fruits and vegetables per day.

SEC. 2. Article 2.5 (commencing with Section 49430) is added to Chapter 9 of Part 27 of the Education Code, to read:

## Article 2.5. The Pupil Nutrition, Health, and Achievement Act of 2001

49430. As used in this article, the following terms have the following meanings:

(a) ''Elementary school'' means a public school that maintains any grade from kindergarten to grade 6, inclusive, but no grade higher than grade 6.

(b) ''Middle school'' means any public school that maintains grade 7 or 8, but no grade higher than grade 9.

(c) ''High school'' means any public school maintaining any of grades 10 to 12, inclusive.

(d) ''Full meal'' means any combination of food items that meet a USDA-approved meal pattern.

49430.3. Notwithstanding any provisions of law, including, but not limited to, Chapter 3 (commencing with Section 38080) of Part 23 or Section 48931, this article shall control over contrary provisions relating to the sale of food items to public school pupils.

49430.5. (a) The reimbursement a school receives for free and reduced price meals sold or served to pupils in elementary or middle schools shall be increased to twenty-three cents ($0.23).

(b) Each elementary and middle school shall receive a reimbursement of ten cents ($0.10) for meals sold at full price.

(c) To qualify for the increased reimbursement for free and reduced price meals and for the reimbursement for meals sold at full price, a school shall follow the United States Department of Agriculture's Enhanced Food Based Meal Pattern, the United States Department of Agriculture's Nutrient Standard Meal Planning, California's SHAPE Menu Patterns, or the USDA Traditional Meal Pattern.

(d) The reimbursement rates set forth in this section shall be adjusted annually for increases in cost of living in the same manner set forth in Section 42238.1.

(e) This section shall become operative on January 1, 2004 and shall become operative only if funding is approved in the Budget Act of 2003 for the purposes of increased reimbursements pursuant to this article.

49431. (a) At elementary and middle schools, and in those schools participating in the pilot program created pursuant to Section 49433.7, the sale of all foods on school grounds shall be approved for compliance with the nutrition standards in the section by the person or persons responsible for implementing these provisions as designated by the school district.

(b) (1) At elementary schools, the only food that may be sold to pupils during breakfast and lunch periods is food that is sold as a full meal. This paragraph does not prohibit the sale of fruit, nonfried vegetables, legumes, beverages, dairy products, or grain products, as individual food items if they meet the requirements set forth in this subdivision.

(2) An individual food item sold to a pupil during morning or afternoon breaks at elementary schools shall meet all of the following standards:

(A) Not more than 35 percent of its total calories shall be from fat. This subparagraph does not apply to the sale of nuts or seeds.

(B) Not more than 10 percent of its total calories shall be from saturated fat.

(C) Not more than 35 percent of its total weight shall be composed of sugar. This subparagraph does not apply to the sale of fruits or vegetables.

(3) Regardless of the time of day water, milk, 100 percent fruit juices, or fruit-based drinks that are composed of no less than 50 percent fruit juice and that have no added sweeteners are the only beverages that may be sold to pupils at an elementary school.

(c) In middle schools, from one-half hour before the start of the schoolday until after the end of the last lunch period, no carbonated beverage shall be sold to pupils.

(d) At middle schools, vending machines that contain beverage items that do not meet the requirements in this section shall remain locked or be rendered inoperable until after the end of the last lunch period.

(e) An elementary school may permit the sale of food items that do not comply with subdivisions (a) to (f), inclusive, of this section as part of a school fundraising event in any of the following circumstances:

(1) By pupils of the school if the sale of those items takes place off of school premises.

(2) By pupils of the school if the sale of those items takes place at least one-half hour after the end of the schoolday.

(f) Notwithstanding Article 3 (commencing with Section 33050) of Chapter 1 of Part 20, this section shall not be waived pursuant to that article.

(g) Although a middle school is required to comply with those provisions of this section applicable to middle schools, it may, in addition, elect to apply for participation in the pilot program pursuant to Section 49433.7.

(h) This section shall become operative on January 1, 2004. School districts shall be required to comply with this section only if funds are appropriated in the Budget Act of 2003 for the purposes of providing support and technical assistance to school districts as set forth in Section 49433.5, for the purposes of providing grants to participating school districts as set forth in subdivision (c) of Section 49433, and for the purposes of increasing meal reimbursements as set forth in Section 49430.5. The State Department of Education shall file a written statement with the Secretary of the Senate and the Chief Clerk of the Assembly within 30 days after enactment of the Budget Act of 2003 stating whether funds have been appropriated as set forth in this subdivision and in Section 49430.5.

49432. By January 1, 2004, every public school may post a summary of nutrition and physical activity laws and regulations, and shall post the school district's nutrition and physical activity policies, in public view within all school cafeterias or other central eating areas. The State Department of Education shall develop the summary of state law and regulations.

49433. (a) A school district maintaining at least one elementary or middle school or high school that is participating in the pilot program pursuant to Section 49433.7 may convene a Child Nutrition and Physical Activity Advisory Committee that shall develop and recommend to the governing board of the school district for its adoption, school district policies on nutrition and physical activity. The committee shall include, but need not be limited to, school district governing board members, school administrators, food service directors, food service staff, staff, parents, pupils, physical and health education teachers, dietitians, health

care professionals, and interested community members. In developing the policy, the committee shall hold at least one public hearing.

(b) The policies shall address issues and goals, including, but not limited to, all of the following:

(1) Implementing the nutritional standards set forth in Section 49431.

(2) Encouraging fundraisers that promote good health habits and discouraging fundraisers that promote unhealthy foods.

(3) Ensuring that no pupil is hungry.

(4) Improving nutritional standards.

(5) Increasing the availability of fresh fruits and vegetables, including provisions that encourage schools to make fruits and vegetables available at all locations where food is sold.

(6) Ensuring, to the extent possible, that the food served is fresh.

(7) Encouraging eligible pupils to participate in the school lunch program.

(8) Integrating nutrition and physical activity into the overall curriculum.

(9) Ensuring regular professional development for food services staff.

(10) Ensuring pupils a minimum of 30 minutes to eat lunch and 20 minutes to eat breakfast, when provided.

(11) Ensuring pupils engage in healthful levels of vigorous physical activity.

(12) Ensuring pupils receive nutrition education.

(13) Improving the quality of physical education curricula and increasing training of physical education teachers.

(14) Enforcing existing physical education requirements.

(15) Altering the economic structures in place to encourage healthy eating by pupils and reduce dependency on generating profits for the school from the sale of unhealthy foods.

(16) Developing a financing plan to implement the policies.

(17) Increasing the availability of organic fruits and vegetables and school gardens.

(18) Collaborating with local farmers' markets.

(c) A school district maintaining at least one elementary or middle school may apply to the State Department of Education for a grant to offset the costs of developing and adopting policies pursuant to this section. The grants shall be one-time grants and shall be available to applicant school districts by March 1, 2002.

(d) A participating school district shall receive a grant of no less than four thousand dollars ($4,000) and no more than twenty-five thousand dollars ($25,000), depending upon the size of the school district, for the purpose of offsetting the costs of developing the school district nutrition and physical activity policies.

49433.5. The State Department of Education shall provide technical support and assistance to school districts in implementing Section 49433. The technical support and assistance shall include, but need not be limited to, highlighting model nutrition programs, disseminating information to assist in the financial management of the food service programs, identifying fundraising mechanisms for school food services programs and for pupil activities that encourage healthy eating habits among pupils, and providing information regarding the current best practices in school child nutrition programs.

49433.7. The State Department of Education shall establish a three-year pilot program in which a total of not less than 10 high schools, middle schools, or any combination thereof, voluntarily adopt the provisions of Sections 49431 and 49432. The pilot program shall commence in the fall of the 2002–03 school year. Participating districts will be eligible to receive a grant pursuant to subdivision (c) of Section 49433. Districts will be eligible for an increased reimbursement rate for free and reduced price meals served at participating high schools as set forth in Section 49430.

49433.9. A school district participating in the pilot program shall comply with all of the following requirements:

(a) (1) No beverage other than any of the following shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday:

(A) Fruit-based drinks that are composed of no less than 50 percent fruit juice and that have no added sweeteners.

(B) Drinking water.

(C) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(D) Electrolyte replacement beverages that do not contain more than 42 grams of added sweetener per 20 ounce serving.

(2) No carbonated beverage shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday.

(3) (A) Except as set forth in subparagraph (B), no beverage that exceeds 12 ounces per serving shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday.

(B) The 12-ounce maximum serving requirement does not apply to any of the following:

(i) Drinking water.

(ii) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(iii) An electrolyte replacement beverage. An electrolyte replacement beverage shall not exceed 20 ounces per serving.

(4) For the purposes of this subdivision and paragraph (3) of subdivision (b) of Section 494312, ''added sweetener'' means any additive that enhances the sweetness of the beverage, including, but not limited to, added sugar, but does not include the natural sugar or sugars that are contained within the fruit juice which is a component of the beverage.

(b) No food item shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday unless it does not exceed 12 ounces per serving and it meets all of the standards set forth in subparagraphs (A) to (C) of paragraph (2) of Section 49431.

(c) Entree items and side dish serving sizes shall be no larger than the portions of those foods served as part of the federal school meal program.

(d) Fruit and nonfried vegetables shall be offered for sale at any location where food is sold.

49434. (a) The Superintendent of Public Instruction shall annually randomly select not less than 10 percent of the school districts of the state to report compliance with this article as set forth in subdivision (b). Although the selection process shall be essentially random, the process shall be weighted in such a manner so as to ensure that the pilot program contains participants that, as a group, are representative of the geographic diversity of the state. The group selected shall be sufficient to provide a statistically random and accurate sampling of the state as a whole.

(b) Each school district selected pursuant to subdivision (a) shall report to the Superintendent of Public Instruction in the coordinated compliance review regarding the extent to which it has complied with this article.

(c) For any school district that the Superintendent of Public Instruction finds is not in compliance with the mandatory provisions of this article, the Superintendent of Public Instruction shall issue a notice of noncompliance. The noncomplying school district shall adopt, and provide to the Superintendent of Public Instruction, a corrective plan. The corrective plan shall set forth the actions to be taken by the school district in order to ensure that the school district will be in full compliance within one year from the issuance of the noncompliance notification.

49435. The State Department of Education, with advice from the Child Nutrition Advisory Council, shall design and implement a financial incentive grant program to help and encourage schools to implement the school district policies and meet the goals described in subdivision (b) of Section 49433.

49436. (a) The State Department of Education shall monitor the implementation of Sections 49431, 49433, 49433.5, 49433.7, and

49433.9 and shall report to the Legislature by January 1, 2005, the department's evaluation of all of the following:

(1) The fiscal impact of the policies and standards developed by school districts.

(2) The effect of this article upon school districts and pupils, including, but not limited to, an assessment of pupil responses and related findings.

(3) Recommendations for improvements or additions.

(4) The resulting changes in food and beverage sales at schools.

(b) The State Department of Education shall report to the Legislature by June 1, 2004, regarding the initial implementation of Section 49431.

SEC. 3. The sum of five million five hundred thousand dollars ($5,500,000) is hereby appropriated from the General Fund to the State Department of Education for the purposes of this article for allocation as follows:

(a) One million dollars ($1,000,000) for the purpose of providing technical support and assistance to school districts in implementing Section 49433 of the Education Code as set forth in Section 49433.5 of the Education Code.

(b) Four million dollars ($4,000,000) for providing grants to applicant school districts for the purposes of developing policies as set forth in subdivision (c) of Section 49433 of the Education Code.

(c) Five hundred thousand dollars ($500,000) for the purposes of monitoring and reporting pursuant to Section 49436 of the Education Code.

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

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## CHAPTER 914

An act to add Section 60450.1 to the Education Code, relating to instructional materials.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 60450.1 is added to the Education Code, to read:

60450.1. (a) Each school district that receives resources under this chapter or any other resources for the purposes of this chapter shall purchase instructional materials for pupils in kindergarten and grades 1 to 12, inclusive, that are aligned with state content standards in language arts, mathematics, history/social science, or science, as adopted by the State Board of Education pursuant to Section 60605, within two years of the date of the adoption of the materials by the State Board of Education.

(b) The purchasing requirements of subdivision (a) are not intended to impair contracts entered into on or before January 1, 2002, for the purchase of instructional materials that are not aligned with the content standards described in subdivision (a), or to apply to the purchase of instructional materials needed to maintain sets of instructional materials purchased prior to the adoption of those content standards.

(c) The State Board of Education may grant an extension for meeting the purchasing requirement of subdivision (a) if the governing board of the school district demonstrates to the State Board of Education that it meets all of the following requirements:

(1) The school district has implemented a well-designed, standards-aligned instructional materials program.

(2) The school district currently has sufficient textbooks or instructional materials for use by each pupil.

(3) The school district has adopted a plan for the eventual expenditure of funds to purchase the instructional materials in the core subject areas referred to in subdivision (a).

(d) The State Board of Education shall provide guidelines and establish deadlines for the submission of requests for an extension pursuant to subdivision (c).

(e) A school district shall report to the Superintendent of Public Instruction any resources received under this chapter that have not been used pursuant to this section within two years of their receipt by the school district. The Superintendent of Public Instruction may offset future apportionments of instructional materials funding in order to recover the unspent funds reported pursuant to this subdivision.

(f) It is the intent of the Legislature that local education agencies shall not carry over any funds in accounts appropriated for the purchase of instructional materials beyond two fiscal years from the completion of a full instructional materials adoption cycle by the State Board of Education.

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

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## CHAPTER 915

An act to add and repeal Section 19551.1 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 19551.1 is added to the Revenue and Taxation Code, to read:

19551.1. (a) The Franchise Tax Board may permit the tax officials of any city to obtain tax information pursuant to subdivision (a) of Section 19551.

(b) The information furnished to tax officials of a city under this section shall be limited as follows:

(1) When requested pursuant to a written agreement, the taxing authority of a city may be granted tax information only on taxpayers with an address as reflected on the Franchise Tax Board's records within the jurisdictional boundaries of the city who report income from a trade or business to the Franchise Tax Board.

(2) The tax information that may be provided by the Franchise Tax Board to a city is limited to a taxpayer's name, address, social security or taxpayer identification number, and business activity code.

(3) Tax information provided to the taxing authority of a city may not be furnished to, or used by, any person other than an employee of that taxing authority.

(4) Section 19542 applies to this section.

(5) Section 19542.1 applies to this section.

(c) The Franchise Tax Board may not provide any information pursuant to this section until all of the following have occurred:

(1) An agreement has been executed between a city and the Franchise Tax Board, that provides that an amount equal to all first year costs

necessary to furnish the city information pursuant to this section shall be received by the Franchise Tax Board before the Franchise Tax Board incurs any costs associated with the activity permitted by this section. For purposes of this section, first year costs include costs associated with, but not limited to, the purchasing of equipment, the development of processes, and labor.

(2) An agreement has been executed between a city and the Franchise Tax Board, that provides that the annual costs incurred by the Franchise Tax Board, as a result of the activity permitted by this section, shall be reimbursed by the city to the board.

(3) Pursuant to the agreement described in paragraph (1), the Franchise Tax Board has received an amount equal to the first year costs.

(d) This section does not invalidate any other law. This section does not preclude any city or, city and county, from obtaining information about individual taxpayers, including those taxpayers exempt from this section, by any other means permitted by state or federal law.

(e) This section shall remain in effect only until December 31, 2008, and as of that date, is repealed.

SEC. 2. The California Research Bureau shall, by December 31, 2005, report to the Legislature regarding the impact and effect of Section 1 of this act.

SEC. 3. This act shall only become operative if this act and Assembly Bill 205 of the 2001–02 Regular Session are both enacted and become effective on or before January 1, 2002.

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## CHAPTER 916

An act to amend Sections 3011 and 3017 of the Elections Code, relating to elections.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 3011 of the Elections Code is amended to read:

3011. The identification envelope shall contain the following:

(a) A declaration, under penalty of perjury, stating that the voter resides within the precinct in which he or she is voting and is the person whose name appears on the envelope.

(b) The signature of the voter.

(c) The residence address of the voter as shown on the affidavit of registration.

(d) The date of signing.

(e) A notice that the envelope contains an official ballot and is to be opened only by the canvassing board.

(f) A warning plainly stamped or printed on it that voting twice constitutes a crime.

(g) A warning plainly stamped or printed on it that the voter must sign the envelope in his or her own handwriting in order for the ballot to be counted.

(h) A statement that the voter has neither applied, nor intends to apply, for an absent voter's ballot from any other jurisdiction for the same election.

(i) The name of the person authorized by the voter to return the absentee ballot pursuant to Section 3017.

(j) The relationship to the voter of the person authorized to return the absentee ballot.

(k) The signature of the person authorized to return the absentee ballot.

SEC. 2. Section 3017 of the Elections Code is amended to read:

3017. All absentee ballots cast under this division shall be voted on or before the day of the election. After marking the ballot, the absent voter shall either: (1) return the ballot by mail or in person to the elections official from whom it came or (2) return the ballot in person to any member of a precinct board at any polling place within the jurisdiction. However, an absent voter who, because of illness or other physical disability, is unable to return the ballot, may designate his or her spouse, child, parent, grandparent, grandchild, brother, sister, or a person residing in the same household as the absent voter to return the ballot to the elections official from whom it came or to the precinct board at any polling place within the jurisdiction. The ballot must, however, be received by either the elections official from whom it came or the precinct board before the close of the polls on election day.

(b) The elections official shall establish procedures to insure the secrecy of any ballot returned to a precinct polling place.

(c) The provisions of this section are mandatory, not directory, and no ballot shall be counted if it is not delivered in compliance with this section.

(d) Notwithstanding subdivision (a), no absent voter's ballot shall be returned by any paid or volunteer worker of any general purpose committee, controlled committee, independent expenditure committee, political party, candidate's campaign committee, or any other group or organization at whose behest the individual designated to return the

ballot is performing a service. However, this subdivision shall not apply to a candidate or a candidate's spouse.

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## CHAPTER 917

An act to amend Sections 84600 and 84602 of the Government Code, relating to the Political Reform Act of 1974, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 84600 of the Government Code is amended to read:

84600. This chapter may be known and may be cited as the Online Disclosure Act.

SEC. 2. Section 84602 of the Government Code is amended to read:

84602. To implement the Legislature's intent, the Secretary of State, in consultation with the commission, notwithstanding any other provision of this title or any other provision of the Government Code, shall do all of the following:

(a) Develop online and electronic filing processes for use by persons and entities specified in Sections 84604 and 84605 required to file statements and reports with the Secretary of State's office pursuant to Chapter 4 (commencing with Section 84100) and Chapter 6 (commencing with Section 86100). Those processes shall each enable a user to comply with all the disclosure requirements of this title and shall include, at a minimum, the following:

(1) A means or method whereby filers subject to this chapter may submit required filings free of charge. Any means or method developed pursuant to this provision shall not provide any additional or enhanced functions or services that exceed the minimum requirements necessary to fulfill the disclosure provisions of this title. At least one means or method shall be made available no later than December 31, 2002.

(2) The definition of a nonproprietary standardized record format or formats using industry standards for the transmission of the data that is required of those persons and entities specified in subdivision (a) of Section 84604 and Section 84605 and that conforms with the disclosure requirements of this title. The Secretary of State shall hold public hearings prior to development of the record format or formats as a means to ensure that affected entities have an opportunity to provide input into

the development process. The format or formats shall be made public no later than July 1, 1999, to ensure sufficient time to comply with the requirements of this chapter.

(b) Accept test files, from software vendors and others wishing to file reports electronically, for the purpose of determining whether the file format is in compliance with the standardized record format developed pursuant to subdivision (a) and is compatible with the Secretary of State's system for receiving the data. A list of software and service providers who have submitted acceptable test files shall be published by the Secretary of State and made available to the public. Acceptably formatted files shall be submitted by a filer in order to meet the requirements of this chapter.

(c) Develop a system that provides for the online or electronic transfer of the data specified in this section utilizing telecommunications technology that assures the integrity of the data transmitted and that creates safeguards against efforts to tamper with or subvert the data.

(d) Make all the data filed available on the Internet in an easily understood format that provides the greatest public access. The data shall be made available free of charge and as soon as possible after receipt. All late contribution and late independent expenditure reports, as defined by Sections 84203 and 84204, respectively, shall be made available on the Internet within 24 hours of receipt. The data made available on the Internet shall not contain the street name and building number of the persons or entity representatives listed on the electronically filed forms or any bank account number required to be disclosed pursuant to this title.

(e) Develop a procedure for filers to comply with the requirement that they sign under penalty of perjury pursuant to Section 81004.

(f) Maintain all filed data online for 10 years after the date it is filed, and then archive the information in a secure format.

(g) Provide assistance to those seeking public access to the information.

(h) Consult with the Department of Information Technology and implement sufficient technology to seek to prevent unauthorized alteration or manipulation of the data.

(i) Provide the commission with necessary information to enable it to assist agencies, public officials, and others, with the compliance and with administration of this title.

(j) Report to the Legislature on the implementation and development of the online and electronic filing and disclosure requirements of this chapter. The report shall include an examination of system security, private security issues, software availability, compliance costs to filers, use of the filing system and software provided by the Secretary of State, and other issues relating to this chapter, and shall recommend

appropriate changes if necessary. In preparing the report, the commission may present to the Secretary of State and the Legislature its comments regarding this chapter as it relates to the duties of the commission and suggest appropriate changes if necessary. There shall be one report due before the system is operational as set forth in Section 84603, one report due no later than June 1, 2002, and one report due no later than January 31, 2003.

SEC. 3. The amendment of Section 84602 of the Government Code made by this act does not constitute a change in, but is declaratory of, existing law.

SEC. 4. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

SEC. 5. The sum of six hundred thousand dollars ($600,000) is hereby appropriated from the General Fund to the Secretary of State to defray the costs of developing software as required by this act.

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

In order to ensure that software allowing for the free filing of online and electronic disclosure reports is made available to affected filers, thereby facilitating compliance with the Political Reform Act of 1974, it is necessary that this act take effect immediately.

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## CHAPTER 918

An act to amend Section 3201 of the Elections Code, relating to elections.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 3201 of the Elections Code is amended to read:

3201. (a) A voter who has any of the following impairments or conditions, or who meets any of the following criteria may apply for permanent absent voter status:

(1) Has lost one or more limbs or the use of one or more limbs.

(2) Has lost both hands or the use of both hands.

(3) Is unable to move about without the aid of an assistant device (e.g., canes, crutches, walker, wheelchair).

(4) Is suffering from lung disease, blindness, or cardiovascular disease.

(5) Has a significant limitation in the use of the lower extremities.

(6) Is suffering from a diagnosed disease or disorder that substantially impairs or interferes with his or her mobility.

(7) Is employed in a position that requires the voter to work shifts of 24 consecutive hours or more.

(b) The following voters may also apply for permanent absent voter status:

(1) A spouse who resides with, and is the primary caregiver to, a voter described in subdivision (a).

(2) A nonspousal primary caregiver to a voter described in subdivision (a) who resides with the voter. As used in this subdivision, ''nonspousal primary caregiver'' means a blood relative or family member related by marriage who has primary responsibility for the care of the voter.

(c) Application for permanent absent voter status shall be made in accordance with Section 3001. The voter or other person described in subdivision (b) shall complete an application, which shall be available from the county elections official, and shall contain all of the following:

(1) Applicant's name at length.

(2) Applicant's residence address.

(3) Address where ballot is to be mailed, if different from the place of residence.

(4) Information that establishes the applicant's right to permanent absent voter status.

(5) The signature of the applicant.

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## CHAPTER 919

An act to add Chapter 11 (commencing with Section 15700) to Division 15 of the Elections Code, relating to elections.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Chapter 11 (commencing with Section 15700) is added to Division 15 of the Elections Code, to read:

CHAPTER 11. EXTENSION OF DEADLINES

15700. It is the intent of the Legislature in enacting this chapter to provide guidance in interpreting Section 2.5 of Article II of the California Constitution.

15701. If a postelection deadline imposed by this code prevents the proper tabulation or recounting of ballots, the county elections official of the affected county may petition the superior court of that county for an extension sufficient to permit the tabulation or recounting of ballots. The court may grant the petition if it finds that the time limitation would prevent the counting of all votes as required by Section 2.5 of Article II of the California Constitution.

15702. For purposes of Section 2.5 of Article II of the California Constitution, ''vote'' includes all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, voter registration, any other act prerequisite to voting, casting a ballot, and having the ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public office and ballot measures.

SEC. 2. This act shall become operative only if ACA 9 of the 2001–02 Regular Session is adopted by the voters and amends the California Constitution by adding Section 2.5 to Article II thereof.

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## CHAPTER 920

An act to amend Sections 17039, 17041, 17055, 17062, 17063, 17301, 17734, 17854, 17935, 17951, 17952, 17952.5, 17953, 17954, 17955, 23036, and 23453 of, to add Sections 17015.5, 17301.3, 17301.4, 17301.5, 17304, 17306, 17307, 19322.1, and 19556 to, and to repeal Sections 17303, 17310, and 17554 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 17015.5 is added to the Revenue and Taxation Code, to read:

17015.5. For purposes of Part 10.2 (commencing with Section 18401) and this part, the term ''part-year resident'' means a taxpayer who meets both of the following conditions during the same taxable year.

(a) Is a resident of this state during a portion of the taxable year.

(b) Is a nonresident of this state during a portion of the taxable year.

SEC. 2. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term ''net tax'' means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the ''net tax'' shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against ''net tax'' in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions, except for those that are allowed to reduce ''net tax'' below the tentative minimum tax, as defined by Section 17062.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits that are allowed to reduce ''net tax'' below the tentative minimum tax, as defined by Section 17062.

(6) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(7) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17061 (relating to refunds pursuant to the Unemployment Insurance Code) and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits:

(A) The credit allowed by Section 17052.2 (relating to teacher retention tax credit).

(B) The credit allowed by former Section 17052.4 (relating to solar energy).

(C) The credit allowed by former Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.5 (relating to solar energy).

(E) The credit allowed by Section 17052.12 (relating to research expenses).

(F) The credit allowed by former Section 17052.13 (relating to sales and use tax credit).

(G) The credit allowed by Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(H) The credit allowed by Section 17053.5 (relating to the renter's credit).

(I) The credit allowed by former Section 17053.8 (relating to enterprise zone hiring credit).

(J) The credit allowed by former Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit).

(K) The credit allowed by former Section 17053.11 (relating to program area hiring credit).

(L) For each taxable year beginning on or after January 1, 1994, the credit allowed by former Section 17053.17 (relating to Los Angeles Revitalization Zone hiring credit).

(M) The credit allowed by Section 17053.33 (relating to targeted tax area sales or use tax credit).

(N) The credit allowed by Section 17053.34 (relating to targeted tax area hiring credit).

(O) The credit allowed by Section 17053.49 (relating to qualified property).

(P) The credit allowed by Section 17053.70 (relating to enterprise zone sales or use tax credit).

(Q) The credit allowed by Section 17053.74 (relating to enterprise zone hiring credit).

(R) The credit allowed by Section 17054 (relating to credits for personal exemption).

(S) The credit allowed by Section 17057 (relating to clinical testing expenses).

(T) The credit allowed by Section 17058 (relating to low-income housing).

(U) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(V) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(W) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit that is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in

succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit shall be allocated among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

(f) Unless otherwise provided, in the case of a partnership, any credit allowed by this part shall be computed at the partnership level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the partnership and to each partner.

(g) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the disregarded business entity shall be limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's ''net tax,'' as defined in subdivision (a), for the taxable year shall be limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 17062), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to that disregarded business entity. No credit shall be allowed if the taxpayer's regular tax (as defined in Section 17062), determined by including the income attributable to the disregarded business entity, is less than the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (c) and (d).

(h) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-through entity described in paragraph (2), any credit passed through to the taxpayer in the taxpayer's first taxable year beginning on or after the date the credit is no longer operative may be claimed by the taxpayer in that taxable year, notwithstanding the repeal of the statute authorizing the credit prior to the close of that taxable year.

(2) For purposes of this subdivision, ''eligible pass-through entity'' means any partnership or S corporation that files its return on a fiscal year basis pursuant to Section 18566, and that is entitled to a credit pursuant to this part for the taxable year that begins during the last year the credit is operative.

(3) This subdivision shall apply to credits that become inoperative on or after the operative date of the act adding this subdivision.

SEC. 2.5. Section 17041 of the Revenue and Taxation Code is amended to read:

17041. (a) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident, except the head of a household as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a resident of this state for the entire taxable year and for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions:

| If the taxable income is: | The tax is: |
|---|---|
| Not over $3,650 . . . . . | 1% of the taxable income |
| Over $3,650 but not over $8,650 . . . . . | $36.50 plus 2% of the excess over $3,650 |
| Over $8,650 but not over $13,650 . . . . . | $136.50 plus 4% of the excess over $8,650 |
| Over $13,650 but not over $18,950 . . . . . | $336.50 plus 6% of the excess over $13,650 |

| | |
|---|---|
| Over $18,950 but not over $23,950 | $654.50 plus 8% of the excess over $18,950 |
| Over $23,950 | $1,054.50 plus 9.3% of the excess over $23,950 |

(b) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident, except the head of a household as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the ''taxable income of a nonresident or part-year resident,'' as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (a) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(c) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident for that taxable year, when the resident is the head of a household, as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a resident of the state for the entire taxable year and for all prior taxable years for carryover items, deferred income, suspended losses, or suspended deductions:

| If the taxable income is: | The tax is: |
|---|---|
| Not over $7,300 | 1% of the taxable income |
| Over $7,300 but not over $17,300 | $73 plus 2% of the excess over $7,300 |
| Over $17,300 but not over $22,300 | $273 plus 4% of the excess over $17,300 |
| Over $22,300 but not over $27,600 | $473 plus 6% of the excess over $22,300 |

| | |
|---|---|
| Over $27,600 but not over $32,600 | $791 plus 8% of the excess over $27,600 |
| Over $32,600 | $1,191 plus 9.3% of the excess over $32,600 |

(d) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident when the nonresident or part-year resident is the head of a household, as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the ''taxable income of a nonresident or part-year resident,'' as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (a) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(e) There shall be imposed for each taxable year upon the taxable income of every estate, trust, or common trust fund taxes equal to the amount computed under subdivision (a) for an individual having the same amount of taxable income.

(f) The tax imposed by this part is not a surtax.

(g) (1) Section 1 (g) of the Internal Revenue Code, relating to certain unearned income of minor children taxed as if the parent's income, shall apply, except as otherwise provided.

(2) Section 1(g)(7)(B)(ii)(II) of the Internal Revenue Code, relating to income included on parent's return, is modified, for purposes of this part, by substituting ''1 percent'' for ''15 percent.''

(h) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the income tax brackets prescribed in subdivisions (a) and (c). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall do both of the following:

(A) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to paragraph (1) and dividing the result by 100.

(B) Multiply the preceding taxable year income tax brackets by the inflation adjustment factor determined in subparagraph (A) and round off the resulting products to the nearest one dollar ($1).

(i) (1) For purposes of this part, the term ''taxable income of a nonresident or part-year resident'' includes each of the following:

(A) For any part of the taxable year during which the taxpayer was a resident of this state (as defined by Section 17014), all items of gross income and all deductions, regardless of source.

(B) For any part of the taxable year during which the taxpayer was not a resident of this state, gross income and deductions derived from sources within this state, determined in accordance with Article 9 of Chapter 3 (commencing with Section 17031 and Chapter 11 (commencing with Section 17951).

(2) For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1), the amount of any net operating loss sustained in any taxable year during any part of which the taxpayer was not a resident of this state shall be limited to the sum of the following:

(A) The amount of the loss attributable to the part of the taxable year in which the taxpayer was a resident.

(B) The amount of the loss which, during the part of the taxable year the taxpayer is not a resident, is attributable to California source income and deductions allowable in arriving at taxable income of a nonresident or part-year resident.

(3) For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1), any carryover items, deferred income, suspended losses, or suspended deductions shall only be includible or allowable to the extent that the carryover item, deferred income, suspended loss, or suspended deduction was derived from sources within this state.

SEC. 3. Section 17055 of the Revenue and Taxation Code is amended to read:

17055. (a) Any individual who is a nonresident or a part-year resident shall be allowed all credits provided under this part against the ''net tax'' (as defined by Section 17039), except those described in subdivision (b) and in Section 17053.5 (relating to the renter's credit), and Section 18002 (relating to taxes paid to another state), in the same proportion as the ratio that ''taxable income of a nonresident or part-year resident'' computed under paragraph (1) of subdivision (i) of Section 17041 bears to ''total taxable income'' (as defined in Section 17301.5).

(b) Credits allowed under this part which are conditional upon a transaction occurring wholly within California shall be allowed in their entirety.

SEC. 4. 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 by multiplying the alternative minimum taxable income of the nonresident or part-year resident, as defined in subparagraph (C), by a rate (expressed as a percentage) equal to the tax computed under subdivision (b) on the alternative minimum taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(C) For purposes of this section, the term ''alternative minimum taxable income of a nonresident or part-year resident'' 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 alternative minimum taxable 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, alternative minimum taxable income (as modified for purposes of

this chapter) which were derived from sources within this state, determined in accordance with Article 9 of Chapter 3 (commencing with Section 17301) and Chapter 11 (commencing with Section 17951).

(iii) For purposes of computing ''alternative minimum taxable income of a nonresident or part-year resident,'' any carryover items, deferred income, suspended losses, or suspended deductions shall only be allowable to the extent that the carryover item, suspended loss, or suspended deduction was derived from sources within this state.

(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. 4.5. Section 17063 of the Revenue and Taxation Code is amended to read:

17063. (a) There shall be allowed as a credit against the net tax (as defined by Section 17039) for any taxable year an amount equal to the minimum tax credit for that taxable year.

(b) For purposes of subdivision (a), the minimum tax credit shall be determined in accordance with Section 53 of the Internal Revenue Code, except as otherwise provided in this part.

(c) For purposes of this chapter, the amount determined under Section 53(c)(1) of the Internal Revenue Code shall be the regular tax as defined by paragraph (2) of subdivision (b) of Section 17062, reduced by the sum of the credits allowable under this part, other than:

(1) The credits described in paragraph (7) of subdivision (a) of Section 17039.

(2) Any credit which reduces the tax below the tentative minimum tax, as defined by Section 17062.

(d) Section 53(d)(1)(B)(ii)(II) of the Internal Revenue Code, relating to credit not allowed for exclusion preferences, is modified to include subdivision (f) of Section 17062, as a specified item.

(e) Section 53(d)(1)(B)(ii)(II) of the Internal Revenue Code, relating to credit not allowed for exclusion preferences, is modified to include subdivision (e) of Section 17062, as a specified item.

SEC. 5. Section 17301 of the Revenue and Taxation Code is amended to read:

17301. For purposes of this part, in the case of a nonresident or part-year resident, the proper apportionment and allocation of the deductions in computing ''taxable income of a nonresident or part-year resident'' computed under paragraph (1) of subdivision (i) of Section 17041 with respect to sources of income within and without the state

shall be determined under rules and regulations prescribed by the Franchise Tax Board.

SEC. 6. Section 17301.3 is added to the Revenue and Taxation Code, to read:

17301.3. For purposes of this part, in the case of a nonresident or part-year resident, the term ''California adjusted gross income'' means adjusted gross income for the entire year derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951) and this article.

SEC. 7. Section 17301.4 is added to the Revenue and Taxation Code, to read:

17301.4. For purposes of this part, in the case of a nonresident or part-year resident, the term ''total adjusted gross income'' means adjusted gross income for the entire year determined under Section 17072 regardless of source, taking into account paragraph (2) of subdivision (h) of Section 17024.5 and Section 17203.

SEC. 8. Section 17301.5 is added to the Revenue and Taxation Code, to read:

17301.5. For purposes of this part, in the case of a nonresident or part-year resident, the term ''total taxable income'' means taxable income for the entire year determined under Section 17073 regardless of source.

SEC. 10. Section 17303 of the Revenue and Taxation Code is repealed.

SEC. 11. Section 17304 is added to the Revenue and Taxation Code, to read:

17304. In the case of a nonresident or part-year resident, itemized deductions allowed as a deduction for the taxable year under Section 63 of the Internal Revenue Code, as modified by Section 17073, or the standard deduction (as provided in Section 17073.5), shall be allowed in computing ''taxable income of a nonresident or part-year resident'' in the ratio (not to exceed 1.00) that California adjusted gross income (as defined in Section 17301.3) bears to total adjusted gross income (as defined in Section 17301.4).

SEC. 12. Section 17306 is added to the Revenue and Taxation Code, to read:

17306. In the case of a nonresident or part-year resident, in computing ''taxable income of a nonresident or part-year resident'' under paragraph (1) of subdivision (i) of Section 17041, references to ''adjusted gross income'' for purposes of computing limitations based upon adjusted gross income, shall mean ''California adjusted gross income'' (as defined in Section 17301.3) for the same taxable year without regard to the limitation used pursuant to paragraph (2) of

subdivision (h) of Section 17024.5 in computing ''total adjusted gross income'' (as defined in Section 17301.4) for that taxable year.

SEC. 13. Section 17307 is added to the Revenue and Taxation Code, to read:

17307. In the case of a nonresident or part-year resident, in computing ''taxable income of a nonresident or part-year resident'' under paragraph (1) of subdivision (i) of Section 17041, for purposes of computing limitations on the deductions described in this section, any reference to ''compensation'' or ''earned income'' shall be a reference to the amount of ''compensation'' or ''earned income'' required to be included in computing ''California adjusted gross income'' (as defined in Section 17301.3) for the same taxable year without regard to the limitation used pursuant to Section 17203 in computing ''total adjusted gross income'' (as defined in Section 17301.4) for that taxable year.

(a) The deduction allowed by Section 219 of the Internal Revenue Code.

(b) The deductions allowed by Sections 162(1) and 404 of the Internal Revenue Code in the case of an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code.

SEC. 14. Section 17310 of the Revenue and Taxation Code is repealed.

SEC. 15. Section 17554 of the Revenue and Taxation Code is repealed.

SEC. 16. Section 17734 of the Revenue and Taxation Code is amended to read:

17734. For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1) of subdivision (i) of Section 17041, in the case of a nonresident beneficiary, income and deduction derived through an estate or trust shall be included in that computation only to the extent that the income or deduction is derived by the estate or trust from sources within this state.

SEC. 17. Section 17935 of the Revenue and Taxation Code is amended to read:

17935. (a) For each taxable year beginning on or after January 1, 1997, every limited partnership doing business in this state (as defined by Section 23101) and required to file a return under Section 18633 shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in Section 23153.

(b) (1) In addition to any limited partnership that is doing business in this state and therefore is subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, every limited partnership that has executed, acknowledged, and filed a certificate of limited partnership with the Secretary of State pursuant to

Section 15621 of the Corporations Code, and every foreign limited partnership that has registered with the Secretary of State pursuant to Section 15692 of the Corporations Code, shall pay annually the tax prescribed in subdivision (a). The tax shall be paid for each taxable year, or part thereof, until a certificate of cancellation is filed on behalf of the limited partnership with the office of the Secretary of State pursuant to Section 15623 or 15696 of the Corporations Code.

(2) If a taxpayer files a return with the Franchise Tax Board that is designated its final return, that board shall notify the taxpayer that the tax imposed by this chapter is due annually until a certificate of cancellation is filed with the Secretary of State pursuant to Section 15623 or 15696 of the Corporations Code.

(c) The tax imposed by this chapter shall be due and payable on the date the return is required to be filed under former Section 18432 or 18633.

(d) For purposes of this section, ''limited partnership'' means any partnership formed by two or more persons under the laws of this state or any other jurisdiction and having one or more general partners and one or more limited partners.

(e) Notwithstanding subdivision (b), any limited partnership that ceased doing business prior to January 1, 1997, filed a final return with the Franchise Tax Board for a taxable year ending before January 1, 1997, and filed a certificate of dissolution with the Secretary of State pursuant to Section 15623 of the Corporations Code prior to January 1, 1997, shall not be subject to the tax imposed by this chapter for any period following the date the certificate of dissolution was filed with the Secretary of State, but only if the limited partnership files a certificate of cancellation with the Secretary of State pursuant to Section 15623 of the Corporations Code. In the case where a notice of proposed deficiency assessment of tax or a notice of tax due (whichever is applicable) is mailed after January 1, 2001, the first sentence of this subdivision shall not apply unless the certificate of cancellation is filed with the Secretary of State not later than 60 days after the date of the mailing of the notice.

SEC. 18. Section 17854 of the Revenue and Taxation Code is amended to read:

17854. For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1) of subdivision (i) of Section 17041, in the case of a nonresident partner, guaranteed payments, as defined by Section 707(c) of the Internal Revenue Code, shall be included in that computation as gross income from sources within this state in the same manner as if those payments were a distributive share of that partnership.

SEC. 19. Section 17951 of the Revenue and Taxation Code is amended to read:

17951. For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1) of subdivision (i) of Section 17041, in the case of nonresident taxpayers the gross income includes only the gross income from sources within this state.

SEC. 20. Section 17952 of the Revenue and Taxation Code is amended to read:

17952. For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1) of subdivision (i) of Section 17041, income of nonresidents from stocks, bonds, notes, or other intangible personal property is not income from sources within this state unless the property has acquired a business situs in this state, except that if a nonresident buys or sells such property in this state or places orders with brokers in this state to buy or sell such property so regularly, systematically, and continuously as to constitute doing business in this state, the profit or gain derived from such activity is income from sources within this state irrespective of the situs of the property.

SEC. 21. Section 17952.5 of the Revenue and Taxation Code is amended to read:

17952.5. (a) For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1) of subdivision (i) of Section 17041, gross income of a nonresident, as defined in Section 17015, from sources within this state shall not include ''qualified retirement income'' received on or after January 1, 1996, for any part of the taxable year during which the taxpayer was not a resident of this state.

(b) For purposes of this section, ''qualified retirement income'' means income from any of the following:

(1) A qualified trust under Section 401(a) of the Internal Revenue Code that is exempt under Section 501(a) of the Internal Revenue Code from taxation.

(2) A simplified employee pension as defined in Section 408(k) of the Internal Revenue Code.

(3) An annuity plan described in Section 403(a) of the Internal Revenue Code.

(4) An annuity contract described in Section 403(b) of the Internal Revenue Code.

(5) An individual retirement plan described in Section 7701(a)(37) of the Internal Revenue Code.

(6) An eligible deferred compensation plan as defined in Section 457 of the Internal Revenue Code.

(7) A governmental plan as defined in Section 414(d) of the Internal Revenue Code.

(8) A trust described in Section 501(c)(18) of the Internal Revenue Code.

(9) Any plan, program, or arrangement described in Section 3121(v)(2)(C) of the Internal Revenue Code, if that income is either of the following:

(A) Part of a series of substantially equal periodic payments (not less frequently than annually) made for either of the following:

(i) The life or the life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient).

(ii) A period of not less than 10 years.

(B) A payment received after termination of employment, under a plan, program, or arrangement to which that employment relates, maintained solely for the purpose of providing retirement benefits for employees in excess of the limitation imposed by Section 401(a)(17), 401(k), 401(m), 402(g), 403(b), 408(k), or 415 of the Internal Revenue Code, or any combination of those sections, or any other limitation on contributions or benefits in the Internal Revenue Code on plans to which any of those sections apply.

(10) Any retired or retainer pay of a member or former member of a uniform service computed under Chapter 71 (commencing with Sec. 1401) of Title 10 of the United States Code.

(c) This section shall apply only to any taxable year, or portion thereof, that the provisions of Section 114 of Title 4 of the United States Code, relating to limitation on state income taxation of certain pension income, are effective.

(d) References to the Internal Revenue Code are subject to paragraph (1) of subdivision (a) of Section 17024.5 which identifies, for each taxable year, the effective date of the referenced provisions of the Internal Revenue Code.

SEC. 22. Section 17953 of the Revenue and Taxation Code is amended to read:

17953. For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1) of subdivision (i) of Section 17041, income of estates and trusts distributed or distributable to nonresident beneficiaries is income from sources within this state only if distributed or distributable out of income of the estate or trust derived from sources within this state. For the purposes of this section, the nonresident beneficiary shall be deemed to be the owner of intangible personal property from which the income of the estate or trust is derived.

SEC. 23. Section 17954 of the Revenue and Taxation Code is amended to read:

17954. For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1) of subdivision (i) of Section 17041, except as provided in Section 25141, gross income

from sources within and without this state shall be allocated and apportioned under rules and regulations prescribed by the Franchise Tax Board.

SEC. 24. Section 17955 of the Revenue and Taxation Code is amended to read:

17955. (a) For purposes of computing ''taxable income of a nonresident or part-year resident'' under paragraph (1) of subdivision (i) of Section 17041, notwithstanding Sections 17951, 17952, and 17953, gross income of a nonresident (as defined in Section 17015) from sources within this state shall not include dividends, interest, or gains and losses from qualifying investment securities if any of the following apply:

(1) In the case of an individual, with respect to the qualifying investment securities, the taxpayer's only contact with this state is through a broker, dealer, or investment adviser located in this state.

(2) In the case of a partner's distributive share of income from qualifying investment securities, the partnership qualifies as an investment partnership, whether or not the partnership has a usual place of business located in this state.

(3) In the case of a beneficiary of a qualifying estate or trust, the taxpayer's only contact with this state is through an investment account managed by a corporate fiduciary located in this state.

(4) In the case of a unit holder in a regulated investment company (as defined in Section 851 of the Internal Revenue Code), to the extent of the dividends distributed by the regulated investment company, whether or not the regulated investment company has a principal place of business in this state.

(b) This section shall not apply to income derived from investment activity that is interrelated with any trade or business activity of the nonresident or an entity in which the nonresident owns an interest in this state, whose primary activities are separate and distinct from the acts of acquiring, managing, or disposing of qualified investment securities, or if those securities were acquired with working capital of a trade or business activity conducted in this state in which the nonresident owns an interest.

(c) For purposes of this section:

(1) ''Investment partnership'' means a partnership that meets both of the following requirements:

(A) No less than 90 percent of the partnership's cost of its total assets consist of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its activities as an investment partnership.

(B) No less than 90 percent of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities.

(2) ''Qualifying estate or trust'' means an estate or trust that meets both of the following requirements:

(A) No less than 90 percent of the estate's or trust's cost of its total assets consist of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its investment activities.

(B) No less than 90 percent of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities.

(3) (A) ''Qualifying investment securities'' include all of the following:

(i) Common stock, including preferred or debt securities convertible into common stock, and preferred stock.

(ii) Bonds, debentures, and other debt securities.

(iii) Foreign and domestic currency deposits or equivalents and securities convertible into foreign securities.

(iv) Mortgage- or asset-backed securities secured by federal, state, or local governmental agencies.

(v) Repurchase agreements and loan participations.

(vi) Foreign currency exchange contracts and forward and futures contracts on foreign currencies.

(vii) Stock and bond index securities and futures contracts, and other similar financial securities and futures contracts on those securities.

(viii) Options for the purchase or sale of any of the securities, currencies, contracts, or financial instruments described in clauses (i) to (vii), inclusive.

(ix) Regulated futures contracts.

(B) ''Qualifying investment securities'' does not include an interest in a partnership unless that partnership is itself an investment partnership.

SEC. 25. Section 19322.1 is added to the Revenue and Taxation Code, to read:

19322.1. (a) A claim for refund that is otherwise valid under Section 19322, but that is made in the case in which payment of the entire tax assessed or asserted has not been made, shall be a claim only for purposes of tolling the time periods set forth in Section 19306. For all other purposes (including the application of Sections 19323, 19324, 19331, 19335, 19384, and 19385) the claim shall be deemed filed on the date that full payment of the tax is made. However, no credit or refund may be made or allowed for any payment made more than seven years before the date that full payment of the tax is made.

(b) This section shall apply to all claims for refund filed on or after the effective date of the act adding this section, without regard to taxable year.

SEC. 26. Section 19556 is added to the Revenue and Taxation Code, to read:

19556. (a) The Franchise Tax Board may disclose to persons described in paragraphs (1) to (4), inclusive, tax return and return information solely for use in an action or proceeding affecting the personnel rights of an employee or former employee, or in preparation of the action or proceeding, but only to the extent the Franchise Tax Board determines that the return or return information is, or may be, relevant and material to the action or proceeding. Tax return and return information may be disclosed pursuant to this section to any of the following persons:

(1) An employee or former employee of the Franchise Tax Board who is, or may be, a party to an administrative action or proceeding affecting the personnel rights of that employee or former employee.

(2) Upon written request by the employee or former employee, to the employee's or former employee's duly authorized legal representative.

(3) Officers and employees of the Franchise Tax Board for use in any action or proceeding affecting the rights of an employee or former employee, to the extent necessary to advance or protect the interests of the State of California.

(4) An administrative law judge, administrative board member, judge, or justice, or authorized officer or employee thereof, in connection with an administrative hearing, adjudication, or appeal thereof, related to an action or proceeding affecting the personnel rights of an employee or former employee.

(b) For purposes of this section, an action or proceeding affecting the personnel rights of an employee or former employee of the Franchise Tax Board means an action proceeding arising under either of the following:

(1) The State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of the Government Code).

(2) The Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code).

(c) Any unauthorized disclosure by a person described in paragraphs (1) to (4), inclusive, of subdivision (a) of any tax return or return information disclosed to that person pursuant to this section shall be subject to criminal penalty and civil liability under this part for that unauthorized disclosure.

SEC. 27. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term ''tax'' includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term ''tax'' does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term ''tax'' shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 17935 or Section 23081, the tax on limited liability companies, imposed under Section 17941 or Section 23091, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948 or Section 23097.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the ''tax'' in the following order:

(1) Credits that do not contain carryover provisions.

(2) Credits that, when the credit exceeds the ''tax,'' allow the excess to be carried over to offset the ''tax'' in succeeding taxable years, except for those credits that are allowed to reduce the ''tax'' below the tentative minimum tax, as defined by Section 23455. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits that are allowed to reduce the ''tax'' below the tentative minimum tax, as defined by Section 23455.

(5) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the ''tax'' below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.7 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) For each taxable year beginning on or after January 1, 1994, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23633 (relating to targeted tax area sales or use tax credit).

(P) The credit allowed by Section 23634 (relating to targeted tax area hiring credit).

(Q) The credit allowed by Section 23649 (relating to qualified property).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the ''tax'' in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative shall continue to be allowed

to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part shall be computed at the S corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the S corporation and to each shareholder.

(i) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the disregarded business entity shall be limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "tax," as defined in subdivision (a), for the taxable year shall be limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. No credit shall be allowed if the taxpayer's regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (d), (e), and (f).

(j) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-through entity described in paragraph (2), any credit passed through to the taxpayer in the taxpayer's first taxable year beginning on or after the date the credit is no longer operative may be claimed by the taxpayer in that taxable year, notwithstanding the repeal of the statute authorizing the credit prior to the close of that taxable year.

(2) For purposes of this subdivision, "eligible pass-through entity" means any partnership or S corporation that files its return on a fiscal year basis pursuant to Section 18566, and that is entitled to a credit

pursuant to this part for the taxable year that begins during the last year a credit is operative.

(3) This subdivision shall apply to credits that become inoperative on or after the operative date of the act adding this subdivision.

SEC. 28. Section 23453 of the Revenue and Taxation Code is amended to read:

23453. (a) There shall be allowed as a credit against the regular tax (as defined by subdivision (c) of Section 23455), for any taxable year, an amount equal to the minimum tax credit for that taxable year.

(b) For purposes of subdivision (a), the minimum tax credit shall be determined in accordance with Section 53 of the Internal Revenue Code, except as otherwise provided in this part.

(c) For purposes of this chapter, the amount determined under Section 53(c)(1) of the Internal Revenue Code shall be the regular tax as defined by subdivision (c) of Section 23455, reduced by the sum of the credits allowable under this part other than any credit which reduces the tax below the tentative minimum tax, as defined by Section 23455.

SEC. 29. The amendments made by this act to Sections 17041, 17055, 17062, 17301, 17334, 17854, 17951, 17952, 17952.5, 17953, 17954, and 17955 of, the additions made by this act of Sections 17051.5. 17301.3, 17301.4, 17301.5, 17304, 17306, and 17307 to, and the repeal made by this act of Sections 17303, 17310, and 17554 of, the Revenue and Taxation Code, shall apply to taxable years beginning on or after January 1, 2002.

SEC. 30. 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.

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## CHAPTER 921

An act to amend Sections 82002, 82039, and 86116 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 82002 of the Government Code is amended to read:

82002. (a) ''Administrative action'' means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding, which shall include any proceeding governed by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(b) ''Ratemaking proceeding'' means, for the purposes of a proceeding before the Public Utilities Commission, any proceeding in which it is reasonably foreseeable that a rate will be established, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.

(c) ''Quasi-legislative proceeding'' means, for purposes of a proceeding before the Public Utilities Commission, any proceeding that involves consideration of the establishment of a policy that will apply generally to a group or class of persons including, but not limited to, rulemakings and investigations that may establish rules affecting an entire industry.

SEC. 2. Section 82039 of the Government Code is amended to read:

82039. (a) ''Lobbyist'' means any individual who receives two thousand dollars ($2,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action. An individual is not a lobbyist by reason of activities described in Section 86300.

(b) For the purposes of subdivision (a), a proceeding before the Public Utilities Commission constitutes ''administrative action'' if it meets any of the definitions set forth in subdivision (b) or (c) of Section 82002. However, a communication made for the purpose of influencing this type of Public Utilities Commission proceeding is not within subdivision (a) if the communication is made at a public hearing, public workshop or other public forum that is part of the proceeding, or if the communication is included in the official record of the proceeding.

SEC. 3. Section 86116 of the Government Code is amended to read:

86116. Every person described in Section 86115 shall file periodic reports containing the following information:

(a) The name, business address, and telephone number of the lobbyist employer or other person filing the report.

(b) The total amount of payments to each lobbying firm.

(c) The total amount of all payments to lobbyists employed by the filer.

(d) A description of the specific lobbying interests of the filer.

(e) A periodic report completed and verified by each lobbyist employed by a lobbyist employer pursuant to Section 86113.

(f) Each activity expense of the filer. A total of all activity expenses of the filer shall be included.

(g) The date, amount, and the name of the recipient of any contribution of one hundred dollars ($100) or more made by the filer to an elected state officer, a state candidate, or a committee controlled by an elected state officer or state candidate, or a committee primarily formed to support the officer or candidate. If this contribution is reported by the filer or by a committee sponsored by the filer in a campaign statement filed pursuant to Chapter 4 which is required to be filed with the Secretary of State, the filer may report only the name of the committee, and the identification number of the committee.

(h) (1) Except as set forth in paragraph (2), the total of all other payments to influence legislative or administrative action including overhead expenses and all payments to employees who spend 10 percent or more of their compensated time in any one month in activities related to influencing legislative or administrative action.

(2) A filer that makes payments to influence a ratemaking or quasi-legislative proceeding before the Public Utilities Commission, as defined in subdivision (b) or (c), respectively, of Section 82002, may, in lieu of reporting those payments pursuant to paragraph (1), report only the portion of those payments made to or for the filer's attorneys for time spent appearing as counsel and preparing to appear as counsel, or to or for the filer's witnesses for time spent testifying and preparing to testify, in this type of Public Utilities Commission proceeding. This alternative reporting of these payments made during a calendar month is not required to include payments made to an attorney or witness who is an employee of the filer if less than 10 percent of his or her compensated time in that month was spent in appearing, testifying, or preparing to appear or testify before the Public Utilities Commission in a ratemaking or quasi-legislative proceeding. For the purposes of this paragraph, time spent preparing to appear or preparing to testify does not include time spent preparing written testimony.

(i) Any other information required by the commission consistent with the purposes and provisions of this chapter.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the 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. The Legislature finds and declares that the provisions of this act further the purposes of both the Political Reform Act of 1974 and Proposition 208 of the 1996 statewide general election within the meaning of subdivision (a) of Section 81012 of the Government Code and Section 45 of that measure.

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## CHAPTER 922

An act to amend Sections 100.5, 3201, 3203, and 18577 of, and to add Section 354.5 to, the Elections Code, relating to elections.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

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

(a) It is the policy of this state that all election laws and procedures shall be established and construed to assist the elector in the exercise of the right to franchise. It is the further policy of the state that this goal be accomplished in an economical manner that both prevents fraud and encourages electors to vote.

(b) The prevention of voter fraud and cost savings may be achieved through voter file maintenance.

(1) Voter file maintenance provides protection against voter fraud by eliminating an active record on a nonexistent or deceased voter, and reflecting the true participation record of voters in elections.

(2) Voter file maintenance also provides cost savings to counties by eliminating the need to maintain records of and mail elections materials to voters who may have died, moved, or changed their surname because of marriage.

(3) Voter file maintenance efforts initiated in 1995 through a statewide voter file and local alternative residency confirmation process have brought about significant savings, as more than 2.5 million voter registration affidavits have been placed on an inactive file.

(4) Further integration and enhancement of state and local voter file maintenance efforts are desired to provide for the most accurate and updated voter file rolls, cost savings, and elimination of potential voter fraud.

(c) Greater elector participation may be achieved by allowing all voters to maintain permanent absent voter status.

(d) The Secretary of State shall report annually to the Legislature regarding the impact, if any, that permitting all voters to apply for permanent absent voter status has on increasing voter participation.

SEC. 2. Section 100.5 of the Elections Code is amended to read:

100.5. Notwithstanding Section 100, a voter who is unable to personally affix on a petition or paper the information required by Section 100 may request another person to print the voter's name and place of residence on the appropriate spaces of the petition or paper, but the voter shall personally affix his or her mark or signature on the appropriate space of the petition or paper, which shall be witnessed by one person by subscribing his or her name thereon.

SEC. 3. Section 354.5 is added to the Elections Code, to read:

354.5. (a) ''Signature'' includes a person's mark if the name of the person affixing the mark is written near the mark by a witness over the age of 18 years designated by the person and the designee subscribes his or her own name as a witness thereto.

(b) A mark attested as provided in subdivision (a) may serve as a signature for any purpose specified in this code, including a sworn statement.

SEC. 4. Section 3201 of the Elections Code is amended to read:

3201. Any voter may apply for permanent absent voter status. Application for permanent absent voter status shall be made in accordance with Section 3001. The voter shall complete an application, which shall be available from the county elections official, and which shall contain all of the following:

(a) Applicant's name at length.

(b) Applicant's residence address.

(c) Address where ballot is to be mailed, if different from the place of residence.

(d) The signature of the applicant.

SEC. 5. Section 3203 of the Elections Code is amended to read:

3203. (a) Upon receipt of an application for permanent absent voter status, the county elections official shall process the application in the same manner as an application for a regular absent voter's ballot.

(b) In addition to processing applications in accordance with Chapter 1 (commencing with Section 3000), if it is determined that the applicant is a registered voter, the county elections official shall do the following:

(1) Place the voter's name upon a list of those to whom an absentee ballot is sent each time there is an election within their precinct.

(2) Include in all absentee ballot mailings to the voter an explanation of the absentee voting procedure and an explanation of Section 3206.

(3) Maintain a copy of the absentee ballot voter list on file open to the public inspection for election and governmental purposes.

SEC. 6. Section 18577 of the Elections Code is amended to read:

18577. Any person having charge of a completed absent voter ballot who willfully interferes or causes interference with its return to the local elections official having jurisdiction over the election is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding ten thousand dollars ($10,000), or by both.

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.

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## CHAPTER 923

An act to amend Section 2185 of the Elections Code, relating to elections.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 2185 of the Elections Code is amended to read:

2185. Upon written demand of the chairman or vice chairman of a party state central committee or of the chairman of a party county central committee, the county elections official shall furnish to each committee, without charge therefor, the index of registration for the primary and general elections or for any special election at which a partisan office is to be filled. The index of registration shall be furnished to the committee demanding the indexes not less than 25 days prior to the day of the primary, general, or special election for which they are provided. Upon written demand, the county elections official shall also furnish to the committee the index of registration of voters who registered after the 54th day before the election, which shall be compiled and prepared by Assembly districts. The county elections official shall furnish either two

printed copies or, if available, one copy in an electronic form of the indexes specified in this section.

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## CHAPTER 924

An act to amend Section 1405 of the Elections Code, relating to special elections.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 1405 of the Elections Code is amended to read:

1405. (a) Except as provided below, the election for a county, municipal, or district initiative that qualifies pursuant to Section 9116, 9214, or 9310 shall be held not less than 88 nor more than 103 days after the date of the order of election.

(1) When it is legally possible to hold a special election on an initiative measure that has qualified pursuant to Section 9116, 9214, or 9310 within 180 days prior to a regular or special election occurring wholly or partially within the same territory, the election on the initiative measure may be held on the same date as, and be consolidated with, that regular or special election.

(2) When it is legally possible to hold a special election on an initiative measure that has qualified pursuant to Section 9116, 9214, or 9310 during the period between a regularly scheduled statewide direct primary election and a regularly scheduled statewide general election in the same year, the election on the initiative measure may be held on the same date as, and be consolidated with, the statewide general election.

(3) To avoid holding more than one special election within any 180-day period, the date for holding the special election on an initiative measure that has qualified pursuant to Section 9116, 9214, or 9310, may be fixed later than 103 days but at as early a date as practicable after the expiration of 180 days from the last special election.

(4) Not more than one special election for an initiative measure that qualifies pursuant to Section 9116, 9214, or 9310 may be held by a jurisdiction during any period of 180 days.

(b) The election for a county initiative that qualifies pursuant to Section 9118 shall be held at the next statewide election occurring not less that 88 days after the date of the order of election. The election for a municipal or district initiative that qualifies pursuant to Section 9215

or 9311 shall be held at the jurisdiction's next regular election occurring not less than 88 days after the date of the order of election.

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## CHAPTER 925

An act to amend Sections 3006, 3205, and 13102 of the Elections Code, relating to voting, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 3006 of the Elections Code is amended to read:

3006. (a) Any printed application that is to be distributed to voters for requesting absent voter ballots shall contain spaces for the following:

(1) The printed name and residence address of the voter as it appears on the affidavit of registration.

(2) The address to which the ballot is to be mailed.

(3) The voter's signature.

(4) The name and date of the election for which the request is to be made.

(5) The date the application must be received by the elections official.

(b) (1) The information required by paragraphs (1), (4), and (5) of subdivision (a) may be preprinted on the application. The information required by paragraphs (2) and (3) of subdivision (a) shall be personally affixed by the voter.

(2) An address, as required by paragraph (2) of subdivision (a), may not be the address of any political party, a political campaign headquarters, or a candidate's residence. However, a candidate, his or her spouse, immediate family members, and any other voter who shares the same residence address as the candidate may request that an absentee ballot be mailed to the candidate's residence address.

(3) Any application that contains preprinted information shall contain a conspicuously printed statement, as follows: ''You have the legal right to mail or deliver this application directly to the local elections official of the county where you reside.''

(c) The application shall inform the voter that if he or she is not affiliated with a political party, the voter may request an absentee ballot for a particular political party for the primary election, if that political party has adopted a party rule, duly noticed to the Secretary of State,

authorizing that vote. The application shall contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall contain a check-off box with a conspicuously printed statement that reads, as follows: ''I am not presently affiliated with any political party. However, for this primary election only, I request an absentee ballot for the _____ Party.'' The name of the political party shall be personally affixed by the voter.

(d) The application shall provide the voters with information concerning the procedure for establishing permanent absentee voter status, and the basis upon which permanent absentee voter status is claimed.

(e) The application shall be attested to by the voter as to the truth and correctness of its content, and shall be signed under penalty of perjury.

SEC. 2. Section 3205 of the Elections Code is amended to read:

3205. (a) Absent voter ballots mailed to, and received from, voters on the permanent absent voter list are subject to the same deadlines and shall be processed and counted in the same manner as all other absent voter ballots.

(b) Prior to each primary election, county elections officials shall mail to every voter not affiliated with a political party whose name appears on the permanent absent voter list a notice and application regarding voting in the primary election. The notice shall inform the voter that he or she may request an absentee ballot for a particular political party for the primary election, if that political party adopted a party rule, duly noticed to the Secretary of State, authorizing these voters to vote in their primary. The notice shall also contain a toll-free telephone number, established by the Secretary of State, that the voter may call to access information regarding which political parties have adopted such a rule. The application shall contain a check-off box with a conspicuously printed statement that reads as follows: ''I am not presently affiliated with any political party. However, for this primary election only, I request an absentee ballot for the ____ Party.'' The name of the political party shall be personally affixed by the voter.

SEC. 3. Section 13102 of the Elections Code is amended to read:

13102. (a) All voting shall be by ballot. There shall be provided, at each polling place, at each election at which public officers are to be voted for, but one form of ballot for all candidates for public office, except that, for partisan primary elections, one form of ballot shall be provided for each qualified political party as well as one form of nonpartisan ballot, in accordance with subdivision (b).

(b) At partisan primary elections, each voter not registered as intending to affiliate with any one of the political parties participating in the election shall be furnished only a nonpartisan ballot, unless he or

she requests a ballot of a political party and that political party, by party rule duly noticed to the Secretary of State, authorizes a person who has declined to state a party affiliation to vote the ballot of that political party. The nonpartisan ballot shall contain only the names of all candidates for nonpartisan offices and measures to be voted for at the primary election. Each voter registered as intending to affiliate with a political party participating in the election shall be furnished only a ballot of the political party with which he or she is registered and the nonpartisan ballot, both of which shall be printed together as one ballot in the form prescribed by Section 13207.

(c) A political party may adopt a party rule in accordance with subdivision (b) that authorizes a person who has declined to state a party affiliation to vote the ballot of that political party at the next ensuing partisan primary election. The political party shall notify the party chairman immediately upon adoption of that party rule. The party chairman shall provide written notice of the adoption of that rule to the Secretary of State not later than the 135th day prior to the partisan primary election at which the vote is authorized.

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 ensure that the adjustments to voting procedures made by this act are applicable to the next election cycle, it is necessary that this act take effect immediately.

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## CHAPTER 926

An act to add Section 33541 to, and to add and repeal Section 51226.4 of, the Education Code, and to amend Section 42603 of, and to add Chapter 12.6 (commencing with Section 42630) to Part 3 of Division 30 of, the Public Resources Code, relating to the environment, and making an appropriation therefor.

[Approved by Governor October 14, 2001. Filed with
Secretary of State October 14, 2001.]

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

SECTION 1. Section 33541 is added to the Education Code, to read:

33541. (a) The State Board of Education and the State Department of Education shall revise, as necessary, the framework in science to include the necessary elements to teach environmental education, including, but not limited to, all of the following topics:

(1) Integrated waste management.

(2) Energy conservation.

(3) Water conservation and pollution prevention.

(4) Air resources.

(5) Integrated pest management.

(6) Toxic materials.

(7) Wildlife conservation and forestry.

(b) The Office of Integrated Environmental Education of the California Integrated Waste Management Board, established pursuant to Section 42603 of the Public Resources Code, shall provide the State Board of Education and the State Department of Education with available environmental information and materials to aid in implementing subdivision (a).

(c) Any recommended revisions in reference to the course requirements in science shall not be implemented until the commencement of the appropriate curriculum framework adoption cycle subsequent to the revision.

SEC. 2. Section 51226.4 is added to the Education Code, to read:

51226.4. (a) For purposes of this section, the following definitions shall apply:

(1) ''Office'' means the Office of Integrated Environmental Education of the California Integrated Waste Management Board, established pursuant to Section 42603 of the Public Resources Code.

(2) ''Pilot program'' means the Environmental Ambassador Pilot Program established pursuant to this section.

(b) Commencing July 1, 2002, the office shall establish the Environmental Ambassador Pilot Program, which shall conclude June 30, 2005.

(c) The office shall establish the pilot program to facilitate the utilization of environmental education as a means to environmental action. The office shall include, in the pilot program, but is not limited to, the development, support, and promotion of all of the following:

(1) Development of sustainable elementary and secondary school programs for environmental systems and environmental science and technology, including school gardens using composted materials.

(2) Coordinated instructional resources and strategies with onsite conservation efforts with active pupil participation, including energy audits and conservation.

(3) Service-learning partnerships, in which schools and communities work to provide real world experiences to pupils in areas of the environment and resource conservation, including education projects developed and implemented by pupils to encourage others to utilize integrated waste management concepts.

(4) Assessment of the impact to participating students and schools of the pilot program, to the extent feasible, on student achievement and resource conservation.

(d) The office shall use findings and results of the pilot program to develop and further refine the unified education strategy established by the office pursuant to Section 42603 of the Public Resources Code.

(e) On or before June 30, 2005, the office shall prepare and submit a report to the Governor and the Legislature on the results of the pilot project.

(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.

SEC. 3. Section 42603 of the Public Resources Code is amended to read:

42603. (a) (1) For purposes of this section ''office'' means the Office of Integrated Environmental Education of the board, as established pursuant to this section.

(2) The Office of Integrated Environmental Education is hereby established in the board. The office, in cooperation with the State Department of Education, State Board of Education, and the Secretary for Education, shall develop and implement a unified education strategy on the environment for elementary and secondary schools in the state. The office shall develop a unified education strategy to do all of the following:

(A) Coordinate instructional resources and strategies for providing active pupil participation with onsite conservation efforts.

(B) Promote service-learning opportunities between schools and local communities.

(C) Assess the impact to participating pupils of the unified education strategy on student achievement and resource conservation.

(3) On or before June 30, 2005, the office shall report to the Legislature and the Governor on its progress in developing, implementing, and assessing the unified education strategy.

(4) Nothing in this subdivision limits or mandates the activities or operations of any existing board, department, office, or commission in state government.

(b) The State Department of Education, State Board of Education, and Secretary for Education, in cooperation with the board, shall develop and implement to the extent feasible, a teacher training and implementation plan, to guide the implementation of the unified education strategy, for the education of students, faculty, and administrators on the importance of integrating environmental concepts and programs in schools throughout the state. The strategy shall project the phased implementation of elementary, middle, and high school programs.

SEC. 4. Chapter 12.6 (commencing with Section 42630) is added to Part 3 of Division 30 of the Public Resources Code, to read:

## CHAPTER 12.6. SCHOOLSITE SOURCE REDUCTION AND RECYCLING ASSISTANCE PROGRAM

### Article 1. Legislative Findings

42630. (a) It is the intent of the Legislature, by enacting this chapter, to accomplish all of the following:

(1) Every school district and schoolsite in this state will be encouraged to implement source reduction, recycling, and composting programs that would do all of the following:

(A) Reduce waste and conserve resources.

(B) Provide pupils with a ''hands-on'' learning experience.

(C) Minimize the expenditure of taxpayer and education dollars on solid waste collection and disposal.

(2) School districts and individual schoolsites will cooperate with cities and counties in developing plans and programs to meet and exceed the state's 50 percent waste reduction and recycling mandate.

(3) To the maximum extent feasible, school districts and schools will utilize products and supplies made from recycled materials.

(4) The State Department of Education, State Board of Education, Secretary for Education, the California Environmental Protection Agency, and the Resources Agency, will coordinate efforts in the development, dissemination, and promotion of the use of environmental education programs for pupils.

(b) The Legislature, therefore, declares that school districts throughout the state should be assisted in establishing and implementing source reduction and recycling programs.

Article 2. Definitions

42635. For purposes of this chapter, the following definitions shall apply:

(a) ''Environmentally preferable product'' means a product that promotes healthy indoor environments for children, and demonstrates the use of the environmentally preferable materials and systems. When compared to other similar products with similar functions an environmentally preferable product has some, or all, of the following characteristics relative to those similar products serving similar functions:

(1) Less hazardous to public health, safety, and the environment.

(2) Consumes less energy in their manufacture or use.

(3) Contains more, or any amount of, recycled or post-consumer material content in their manufacture.

(4) Results in less potential waste.

(5) Results in less harm to indoor air quality.

(6) Consumes less water.

(7) Include features, or is manufactured from materials, that promotes recycling or reuse of the product.

(b) ''Local agency'' means a city that has prepared, adopted, and submitted to the county a source reduction and recycling element pursuant to Section 41000, and a county that has prepared and submitted to the board an integrated waste management plan pursuant to Section 41570.

(c) ''Office'' means a county office of education.

(d) ''School'' or ''schoolsite'' means a public elementary or secondary school.

(e) ''School district'' has the same meaning as defined in Section 80 of the Education Code.

Article 3. Diversion

42638. Each school district and office may coordinate with local agencies to implement solid waste management programs to maximize the diversion of solid waste from landfill disposal or transformation facilities. This coordination between the school district or office and the local agency may include, but is not limited to, assessing the school district's solid waste and diversion needs and developing new or expanding existing integrated waste management programs, including waste prevention, recycling and composting programs.

Article 4. Models and School Waste Reduction Tools

42640. (a) On or before July 1, 2002, after researching and determining the best waste reduction practices for school districts and schoolsites, the board shall develop models and school waste reduction tools, based upon the program developed pursuant to Section 42621, that may be used by schools, school districts, offices, and local agencies to implement waste reduction programs. The models and tools may include, but not be limited to, all of the following:

(1) Waste prevention, recycling, composting, procurement, and green building elements that, when properly implemented, create hands-on learning experiences for pupils and result in a greater reduction in schoolsite and school district solid waste generation than currently exists.

(2) Model waste reduction programs that may be implemented by the local agencies, schoolsites, and school districts.

(3) Environmental, economic, and educational benefits of implementing waste reduction programs.

(b) The board shall make the models and tools available and downloadable to local agencies, schools, and school districts from the board's Web site.

Article 5. Training, Assistance, and Information

42641. The board shall provide training and ongoing technical and informational assistance to local agencies, offices, schools, and school districts on implementing waste reduction programs.

42642. The Division of the State Architect, in consultation with the board, shall develop and maintain on its Web site, a list of environmentally preferable products and a list of recycled products that may be used in the construction and modernization of school facilities. The board shall provide notice to each school district of the existence of these lists and their location on these Web sites.

Article 6. Grants

(a) The board, in consultation with the State Department of Education, the State Board of Education, and the Secretary for Education, a program to provide grants to school districts and schools to assist in the development and implementation of educational programs and to promote the use of existing educational programs, to teach the concepts of source reduction, recycling, and composting.

(b) The board, in consultation with the State Department of Education, the Board of Education, and the Secretary for Education,

shall adopt criteria for awarding grants pursuant to this article, including, but not limited to, the grant's structure, the schedule for awarding grants, and grant amount limits. This criteria shall include, but not be limited to, a procedure for the geographic distribution of the grants and the appropriate representation of elementary, middle, and high school as grant recipients. In adopting this criteria, the board shall include, in the criteria, the extent to which a an office, a school district, or a school has demonstrated a commitment to achieving the following goals:

(1) The adoption of waste reduction and recycling programs and practices.

(2) The adoption and implementation of the unified education strategy adopted pursuant to Section 42603.

(3) The allocation of adequate space for the safe collection, storage, and loading of recyclable materials.

(4) To the maximum extent feasible, the use of recycled materials and environmentally preferable products in the construction or modernization of public school facilities.

(5) Participation in the environmental ambassador pilot program established pursuant to Section 51226.4 of the Education Code.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the adoption of criteria for the awarding of grants pursuant to this article is not the adoption of a regulation, and is exempt from the requirements of that chapter.

42646. On or before January 1, 2004, the board shall evaluate the implementation of school waste reduction and recycling programs in the state's schools and if the board determines less than 75 percent of schools have implemented a waste reduction and recycling program, the board shall recommend to the Legislature those statutory changes needed to require schools to implement such a program.

42647. The board may enter into an interagency agreement with the State Department of Education or other state agencies to implement this chapter, Section 42603, and Sections 33541 and 51226.4 of the Education Code.

SEC. 5. The sum of one million five hundred thousand ($1,500,000) dollars is hereby appropriated from the fees deposited pursuant to Section 48000 of the Public Resources Code in the Integrated Waste Management Fund, for expenditure by the California Integrated Waste Management Board, to provide grants to county offices of education, school districts, and schools to assist in the development and implementation of programs pursuant to Section 42645 of the Public Resources Code. The board may expend not more than 5 percent of the amount appropriated by this section for administrative costs.

SEC. 6. The Legislature finds and declares that the fees appropriated by Section 5 of this act are not the proceeds of taxes within the meaning of Article XIII A of the California Constitution, but instead, are the proceeds of fees for all of the following reasons:

(a) The amounts appropriated by Section 5 of this act will be used to provide for grants to teach the concepts of source reduction, recycling, and composting, the goal of which is to reduce the amount of solid waste disposed of in landfills.

(b) Due to the potentially adverse environmental impact of landfill of solid waste and the state's diminishing landfill capacity, the use of the fees paid by operators of solid waste facilities to pay for this education mitigates the future adverse impact of the operation of solid waste facilities.

(c) Decreasing the amount of solid waste sent to landfill, by diverting through recycling and waste reduction, will also benefit the operators of solid waste disposal sites, by decreasing the amount of solid waste that is required to be disposed in landfills.

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## CHAPTER 927

An act to repeal the heading of Article 3 (commencing with Section 18320) of, and to add and repeal Article 3 (commencing with Section 18320) of, Chapter 4 of Division 18 of, the Elections Code, relating to campaign practices.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 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 World Wide Web is a unique arena for the free and open exchange of ideas.

(b) ''Political cybersquatting'' stifles that open exchange, thus undermining the essential element of our democracy.

(c) During the November 7, 2000, general election, the opponents of Proposition 36, the drug treatment initiative, engaged in political cybersquatting, the cynical and deceitful practice of co-opting the Web site domain name, or address, of a competitor in order to keep the public away from the competitor's Web site.

(d) The opponents registered several domain names that would be reasonably foreseen to support passage of Proposition 36. When persons using the Internet entered one of the ''Yes on Proposition 36'' Web site

addresses, the person was directed instead (and involuntarily) to the official ''No on Proposition 36'' Web site.

(e) Political cybersquatting has the effect of denying a voter access, or interfering with a voter's access, to information that will allow the person to make a knowledgeable electoral decision. It is the equivalent of stealing campaign literature out of a voter's mailbox because it prevents a voter from accessing or being aware of particular electoral information.

(f) Political cybersquatting violates principles of free speech by denying unfettered access to the free and open exchange of ideas. Therefore, it is the intent of the Legislature to protect that free and open exchange of ideas at the heart of our electoral system by prohibiting the act of political cybersquatting.

SEC. 2. The heading of Article 3 (commencing with Section 18320) of Chapter 4 of Division 18 of the Elections Code is repealed.

SEC. 3. Article 3 (commencing with Section 18320) is added to Chapter 4 of Division 18 of the Elections Code, to read:

Article 3. Deceptive Online Activities

18320. (a) This act shall be known and may be cited as the ''California Political Cyberfraud Abatement Act.''

(b) It is unlawful for a person, with intent to mislead, deceive, or defraud, to commit an act of political cyberfraud.

(c) As used in this section:

(1) ''Political cyberfraud'' means a knowing and willful act concerning a political Web site that is committed with the intent to deny a person access to a political Web site, deny a person the opportunity to register a domain name for a political Web site, or cause a person reasonably to believe that a political Web site has been posted by a person other than the person who posted the Web site. Political cyberfraud includes, but is not limited to, any of the following acts:

(A) Intentionally diverting or redirecting access to a political Web site to another person's Web site by the use of a similar domain name, meta-tags, or other electronic measures.

(B) Intentionally preventing or denying exit from a political Web site by the use of frames, hyperlinks, mouse-trapping, pop-up screens, or other electronic measures.

(C) Registering a domain name that is similar to another domain name for a political Web site with intent to cause confusion.

(D) Intentionally preventing the use of a domain name for a political Web site by registering and holding the domain name or by reselling it to another with the intent of preventing its use.

(2) ''Domain name'' means any alphanumeric designation that is registered with or assigned by any domain name registrar, domain name registry, or other domain registration authority as part of an electronic address on the Internet.

(3) ''Political Web site'' means a Web site that urges or appears to urge the support or opposition of a statewide ballot measure.

(4) ''Statewide ballot measure'' means a measure that has been certified to appear on a statewide ballot.

18321. This article does not apply to a domain name registrar, registry, or registration authority.

18322. A violation of this article is punishable by a fine not to exceed one thousand dollars ($1,000) for each day the violation occurs. A court may order the transfer of a domain name as part of the relief awarded.

18323. Jurisdiction for actions brought pursuant to this article shall be in accordance with Section 410.10 of the Code of Civil Procedure.

18324. 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 on or before January 1, 2003, deletes or extends that date.

SEC. 4. Notwithstanding subdivision (f) of Section 2 of Chapter 975 of the Statutes of 2000, the Bipartisan California Commission on Internet Political Practices shall report its findings and recommendations to the Legislature not later than September 30, 2002, and shall include in its study the issue of political cyberfraud. The commission shall cease to exist on October 1, 2002.

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## CHAPTER 928

An act to add Section 5405.6 to the Business and Professions Code, relating to outdoor advertising displays.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 5405.6 is added to the Business and Professions Code, to read:

5405.6. Notwithstanding any other provision of law, no outdoor advertising display that exceeds 10 feet in either length or width, shall be built on any land or right-of-way owned by the Los Angeles County Metropolitan Transportation Authority, including any of its rights-of-way, unless the authority complies with any applicable

provisions of this chapter, the federal Highway Beautification Act of 1965 (23 U.S.C.A. Sec. 131), and any local regulatory agency's rules or policies concerning outdoor advertising displays. The authority shall not disregard or preempt any law, ordinance, or regulation of any city, county, or other local agency involving any outdoor advertising display.

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.

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## CHAPTER 929

An act to amend Sections 12944.7 and 31633 of the Water Code, and to add Sections 15.1 and 16.1 to the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), relating to water.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 12944.7 of the Water Code is amended to read:

12944.7. (a) Notwithstanding any other provision of law, except as specified in subdivision (b), any public agency that has executed a contract with the state for a water supply pursuant to Section 12937 may sell any water available to that agency directly to any ultimate water consumer within the agency.

(b) Notwithstanding subdivision (a), if the principal act of the public agency restricts the agency to the wholesale distribution of water, the right to sell water directly to consumers may be exercised by the agency only pursuant to written contract with (1) a wholesaler, if any exists, to which the water would otherwise be sold and (2) a public entity water purveyor, if any exists, serving water at retail within the area in which the consumer is located or a water corporation, if any exists, subject to regulation by the Public Utilities Commission and serving water at retail within the area in which the consumer is located.

SEC. 2. Section 31633 of the Water Code is amended to read:

31633. The amount of any replenishment assessment levied within an area of benefit shall be established at the discretion of the board, except that no assessment shall exceed the sum of the following costs and charges:

(a) Those charges imposed under the contract between the district and the state for an imported water supply from the State Water Resources Development System consisting of all of the following:

(1) The variable operation, maintenance, power, and replacement component of the transportation charge.

(2) The off-aqueduct power facilities component of the transportation charge.

(3) The delta water charge.

(4) Any surplus water or unscheduled water charge.

(5) Sums paid by the district to the Desert Water Agency for payment of similar charges under a similar contract the agency has with the state as provided in the water management agreement of July 1, 1976, as amended.

(b) The cost of recharging the groundwater basin with imported water from the State Water Resources Development System not included in subdivision (a).

(c) The cost of importing and recharging water from sources other than the State Water Resources Development System.

(d) The cost of treatment and distribution of reclaimed water for recharge or for direct use in lieu of groundwater.

(e) The cost of programs providing incentives to use reclaimed water or Colorado River water in place of groundwater.

SEC. 3. Section 15.1 is added to the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), to read:

Sec. 15.1. (a) (1) Notwithstanding subdivision (b) of Section 12944.7 of the Water Code and Section 15 of this act, but subject to paragraph (2), the agency may exercise retail water authority only within the following boundaries:

Beginning at the southwest corner of Section 6, Township 3 North, Range 14 West, S.B.M.; thence northerly along the westerly boundary of said Section 6 thereof to the northwest corner of said Section 6, thence westerly along the prolongation of the northerly boundary of Section 6 to the southwestern corner of Section 31, Township 4 North, Range 14 West, S.B.M.; thence northerly along the westerly boundaries of Sections 31 and 30 to the northwest corner of Section 30, thence easterly along the northerly boundary of Section 30, Township 4 North, Range 14 West, S.B.M. to the southeast corner of the southwest quarter of Section 19, Township 4 North, Range 14 West, S.B.M.; thence northerly to the northeast corner of the northwest quarter of Section 19; thence

easterly along the northerly boundary of Section 19 to the southeast corner of Section 18, Township 4 North, Range 14 West, S.B.M.; thence northerly along the easterly boundary of said Section 18 and prolongation thereof to the northeast corner of Section 31, Township 5 North, Range 14 West, S.B.M.; thence westerly along the northerly boundary of said Section 31 and prolongation thereof to the southwest corner of the southeast quarter of Section 27, Township 5 North, Range 15 West, S.B.M.; thence northerly along the easterly boundary of the west one-half of Section 27 to the northerly boundary of Section 27; thence westerly along said northerly boundary to the northwest corner of Section 28, Township 5 North, Range 15 West, S.B.M.; thence southerly along the westerly boundary of said Section 28 to the northwest corner of the southwest quarter of Section 28; thence westerly to the northwest corner of the southeast quarter of Section 29, Township 5 North, Range 15 West, S.B.M.; thence southerly along the westerly boundary of said southeast quarter to the southwest corner of the southeast quarter of Section 29, thence westerly along the southerly boundary of said Section 29 and prolongation thereof to the southwest corner of Section 35, Township 5 North, Range 16 West, S.B.M.; thence southerly along the westerly boundary of said Section 35 and prolongation thereof to the southerly right-of-way of that certain street in the City of Santa Clarita known as ''Lyons Avenue''; thence westerly along said southerly right-of-way to the intersection of said southerly right-of-way and the easterly right-of-way of the public right-of-way known as ''Interstate 5''; thence southeasterly along said right-of-way until intersecting with the prolongation of the southerly boundary of Section 6, Township 3 North, Range 14 West; thence easterly along said prolongation thereof to the point of beginning.

(2) (A) Any area within the area described in paragraph (1) that is also within the boundaries of the Newhall County Water District, and not served by the Santa Clarita Water Company on September 2, 1999, may not be served by the agency unless the Newhall County Water District has granted approval.

(B) Nothing in this section prohibits the Newhall County Water District from exercising any authority conferred by other law for the purpose of providing retail water service within the area described in paragraph (1).

(b) The agency may not exercise retail water authority outside the boundaries described in paragraph (1) of subdivision (a). Any expansion of retail water authority outside the boundaries described in paragraph (1) of subdivision (a) shall require authorization by statute.

(c) Except during a water emergency declared by the board pursuant to Chapter 3 (commencing with Section 350) of Division 1 of the Water

Code, the agency may not export groundwater produced within the area described in paragraph (1) of subdivision (a) outside of that area.

(d) During any rolling average five-year period, the agency shall use water imported by the agency for not less than 50 percent of the water supply demand within the area described in paragraph (1) of subdivision (a).

(e) (1) On or before February 1, 2002, the agency shall commence the preparation of a groundwater management plan that meets the requirements of Part 2.75 (commencing with Section 10750) of Division 6 of the Water Code.

(2) (A) Prior to the formulation or adoption of a groundwater management plan, the agency shall form a Groundwater Management Plan Advisory Council consisting of one representative from each retail water purveyor within the agency's jurisdiction, and one representative from each groundwater producer who produced more than 100 acre-feet of water in the preceding water year within the agency's jurisdiction. The agency shall regularly consult with the council regarding all aspects of the proposed groundwater management plan. No groundwater management plan shall be submitted to the agency's board of directors for consideration without the board first having forwarded a copy of the proposed plan to the council for review and having received the council's timely comments to the plan.

(B) All members of the council, or their representatives, shall receive written notice with regard to, and may attend, all meetings of any board, program committee, advisory or technical body, interagency group, or any other group formulating, reviewing, evaluating, or otherwise working on any aspect of the groundwater management plan as described in paragraph (1).

(3) The agency shall complete the groundwater management plan on or before February 1, 2004, except that the agency may extend the completion date for the period of time in which any court issues an injunction that impairs the ability of the agency to complete the groundwater management plan in accordance with this subdivision.

(4) If the agency fails to commence the preparation of a groundwater management plan in accordance with paragraph (1) or fails to complete a groundwater management plan in accordance with paragraph (2), any interested party may seek a writ of mandamus to compel the agency to prepare a groundwater management plan in accordance with this subdivision.

(5) The water quality and quantity data gathered pursuant to the memorandum of understanding between the Santa Clara River Valley Upper Basin Water Purveyors and the United Water Conservation District, effective August 20, 2001, shall be made available to the agency

for purposes of preparing and updating the groundwater management plan.

(f) Nothing in this section authorizes the agency to provide retail water service outside the boundaries of the agency.

SEC. 4. Section 16.1 is added to the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), to read:

Sec. 16.1. The agency may exercise the authority granted by Section 15.1 in accordance with the County Water District Law as set forth in Division 12 (commencing with Section 30000) of the Water Code.

SEC. 5. The Legislature finds and declares that because Sections 1, 3, and 4 of this act, which amend Section 12944.7 of the Water Code and the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), are prospective, the Legislature expresses no opinion with regard to any court actions filed prior to July 1, 2001.

SEC. 6. 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.

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## CHAPTER 930

An act to amend Section 6025 of the Penal Code, relating to the Board of Corrections.

[Approved by Governor October 14, 2001. Filed with Secretary of State October 14, 2001.]

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

SECTION 1. Section 6025 of the Penal Code is amended to read:

6025. (a) The Board of Corrections shall be composed of 15 members, one of whom shall be the Secretary of the Youth and Adult Correctional Agency who shall be designated as the chairperson, one of whom shall be the Director of Corrections, one of whom shall be the Director of the Youth Authority, and 12 of whom shall be appointed by the Governor after consultation with, and with the advice of, the Secretary of the Youth and Adult Correctional Agency, and with the advice and consent of the Senate. The gubernatorial appointments shall include all of the following:

(1) A county sheriff in charge of a local detention facility which has a Board of Corrections rated capacity of 200 or less inmates.

(2) A county sheriff in charge of a local detention facility which has a Board of Corrections rated capacity of over 200 inmates.

(3) A county supervisor or county administrative officer.

(4) A chief probation officer from a county with a population over 200,000.

(5) A chief probation officer from a county with a population under 200,000.

(6) A manager or administrator of a county local detention facility.

(7) An administrator of a local community-based correctional program.

(8) Two public members.

(9) Two rank and file representatives from one or more local corrections facilities, as described in Section 6035. One representative shall be a juvenile probation officer at the level of the first line supervisor or below, with a minimum of five years of experience in a juvenile facility, and one representative shall be a deputy sheriff with the rank of sergeant or below, with a minimum of five years experience in an adult facility.

(10) A representative of a community-based youth service organization.

(b) Of the members first appointed by the Governor, two shall be appointed for a term of two years, three for a term of three years, and three for a term of four years. The length of the original term to be served by each member first appointed shall be determined by lot. Their successors shall serve for a term of three years and until appointment and qualification of their successors, each term to commence on the expiration date of the term of the predecessor.

(c) The board shall select a vice chairperson from among its members. Seven members of the board shall constitute a quorum.

(d) When the board is hearing charges against any member, the individual concerned shall not sit as a member of the board for the period of hearing of charges and the determination of recommendations to the Governor.

(e) If any appointed member is not in attendance for three consecutive meetings the board shall recommend to the Governor that the member be removed and the Governor shall make a new appointment, with the advice and consent of the Senate, for the remainder of the term.

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